

Illumina Terms and Conditions of Sale – Goods – AMR

- Definitions.** “**Agreement**” means the written quotation provided by Illumina to Customer (as defined in the relevant quotation), including these terms and conditions which form a part thereof. “**Arrays**” means Illumina’s proprietary products based on its BeadArray™ technology, or its VeraCode™ technology, as applicable, whether containing standard, universal, or custom content. “**Assays**” means Illumina’s proprietary assay methods performed using Illumina’s Arrays and Consumables. “**BeadArray System**” means Illumina’s BeadLab or BeadStation 500 genetic analysis system, including accessories or peripherals, based on its proprietary BeadArray technology, comprised of the Components specified in the Specifications. “**BeadXpress System**” means Illumina’s BeadXpress detection system including accessories or peripherals, based on its proprietary VeraCode technology, comprised of the Components specified in the Specifications. “**Cluster Kits**” means a kit supplied by Illumina for amplifying nucleic acid templates on an Illumina Cluster Station. “**Cluster Station**” means Illumina’s cluster station for amplifying nucleic acid templates. “**Components**” means all Hardware, Software and Documentation for the System. “**Consumables**” means all Arrays, Custom Arrays, Custom Oligo Pools, Standard Oligo Pools, Flow Cells, accessories, Sample Preparation Kits, Cluster Kits, Sequencing Kits and Reagent Kits. “**Custom Arrays**” means Arrays specifically made for a Customer from a Custom beadpool. “**Custom Oligo Pool**” (or “Custom OPA”) means an Oligo Pool specially designed for Customer. “**Derivative Software**” means any derivative or modification of Software made by Customer as may be permitted by the relevant EULA. “**Documentation**” means user manuals, protocols or other documentation provided by Illumina under this Agreement related to the use and maintenance of the System or any Components thereof or any Consumables. “**EULA**” means the software end user license agreement provided by Illumina to Customer. “**Facility**” means the Customer facility located at the shipping address indicated on the written quotation provided by Illumina to Customer. “**Final Investment**” means the amount designated as “Final Investment” on the written quotation provided by Illumina to Customer. “**Flow Cell**” means Illumina’s proprietary flow cells supplied for use on Illumina’s Cluster Station and Genome Analyzer. “**Genome Analyzer**” means Illumina’s sequencing instrument. “**Hardware**” means the hardware provided under this Agreement, or as upgrades or options under future agreements, as specified in the Specifications, including any Hardware that is a third-party Component. “**Intellectual Property Rights**” means all patent rights, copyrights, trade secrets, know-how, trademark, service mark and trade dress rights and other intellectual property rights, current or future, under the laws of any jurisdiction, together with all applications therefore and registrations thereto. “**iScan**” means Illumina’s high-resolution scanner that supports imaging of BeadArray-based genetic analysis products, including such accessories or peripherals as are described in the Specifications. “**Oligo Pool**” (or “OPA”) means a standard or custom collection of oligonucleotides required to practice an Assay. “**Reagent Kit**” means a kit containing the chemicals and enzymes supplied by Illumina to practice an Assay. “**Sample Preparation Kit**” means a kit supplied by Illumina containing the reagents required to prepare a nucleic acid template for amplification on an Illumina Cluster Station. “**Sequencing Kit**” means a kit supplied by Illumina containing the sequencing reagents for use on Illumina’s Genome Analyzer. “**SNP**” means single nucleotide polymorphism. “**Software**” means the Software provided under this Agreement, or as upgrades or options under future agreements, or as incorporated or embedded in other Components provided under this Agreement, in object code form, whether or not there is a separate charge thereof, including any Software that is provided from a third party. All references in this Agreement to the “purchase” or “sale” of Software shall mean the acquiring or granting, respectively, of a license to use such Software to exercise the rights pertaining to such Software that are expressly set forth herein. “**Specifications**” means the specifications for the System, Components or Consumables contained in the written quotation provided to Customer. “**Standard Oligo Pool**” (or “Standard OPA”) means an Oligo Pool offered for sale by Illumina as a regular catalog item. “**System**” means Illumina’s BeadArray System, BeadXpress system, Cluster Station, Genome Analyzer, or iScan, as applicable.
- Applicability of Terms and Conditions.** This Agreement shall exclusively govern the ordering, purchase and supply of the System, Components and any Consumables hereunder, and shall override any conflicting, amending and/or additional terms contained in any purchase orders, invoices or similar documents, which are hereby rejected and shall be null and void. Illumina’s failure to object to any such terms shall not constitute a waiver by Illumina, nor constitute acceptance by Illumina of such terms and conditions. All orders or contracts for the System, Components or Consumables must be approved and accepted by Illumina in writing.
- Design and Synthesis of Custom Arrays or Custom Oligo Pools.** Illumina will use commercially reasonable efforts to attempt to collaboratively develop Custom Arrays or Custom Oligo Pools for Customer, according to its standard business practices. Customer may incur separate or additional design and synthesis fees pursuant to such custom product development practices.
- Installation of System or Upgrades or Options.** Illumina shall install the System at the Customer Facility set forth in the Agreement. Such installation is included in the purchase price of the System. Illumina shall install the System, and will use commercially reasonable efforts to schedule and complete installation within thirty (30) days of delivery of all of the Components to the Customer Facility. As to any upgrades or options purchased by Customer, Illumina will provide Customer with any predefined specifications or requirements necessary for their installation. If, in Illumina’s sole discretion, Customer’s Facility does not meet Illumina’s predefined specifications or requirements for the installation of such upgrades or options, Customer agrees to pay Illumina’s hourly service rate to bring the Customer Facility within such compliance for installation of upgrades or options. Illumina and Customer will cooperate with each other to coordinate installation.
- Financial Terms for the System, Components and Consumables.** All prices are FOB point of shipment at Illumina’s designated location and Illumina, through its carrier, will deliver the System, Components or Consumables to Customer’s designated premises. Illumina will make arrangements for shipment and will obtain appropriate insurance coverage for each shipment, both of which will be separately invoiced to Customer. All prices are exclusive of shipping and insurance charges, all of which are Customer’s sole responsibility. All prices and other amounts payable to Illumina under this Agreement are exclusive of and are payable without deduction for all sales, use, excise, value added, withholding and other taxes, customs duties, tariffs or charges now or hereafter claimed or imposed by any governmental authority upon the sale of the System, Components or Consumables, all of which will be paid by Customer. In the event Illumina is required to pay any such tax, duty or charge, such amount will be added to the purchase price or subsequently invoiced to the Customer. Prices are subject to revision due to interruptions, engineering changes or changes in quality caused or requested by Customer. Illumina will determine payment terms on a per-order basis and such terms are subject to a credit review by Illumina. Unless otherwise authorized in writing by Illumina, the Final Investment price shall be made in full by the Customer within thirty (30) days from the date of the invoice. Invoices will be issued by Illumina upon shipment of the goods provided hereunder. Any amounts not paid when due will accrue

interest at the rate of one and one half percent (1.5%) per month, or the maximum amount allowed by law, if lower. In the event that any payment is more than thirty (30) days late, Illumina shall have the right to suspend performance, including shipment, until all payments are made current. Customer shall pay for all costs (including reasonable attorneys' fees) incurred by Illumina in connection with the collection of late payments. The amount of credit may be changed or credit withdrawn by Illumina at any time. Each accepted purchase order is a separate, independent transaction, and Customer has no right of set-off against other purchase orders or other transactions with Illumina.

6. **Purchase Money Security Interest.** Customer hereby grants Illumina a purchase money security interest in the System and/or the Consumables in the amount of the unpaid balance of the purchase price for the System, Components or Consumables until paid in full. Illumina may file a financing statement for such security interest and Customer shall sign any such statements or other documentation necessary to perfect Illumina's security interest.

7. **Delivery/Title/Risk of Loss.** All sales are FOB point of shipment at Illumina's designated location, and Illumina's title to each System, Component or Consumable and the risk of loss or damage thereto shall (except for Software) pass to Customer at the time of Illumina's delivery of such System, Component or Consumable to the carrier. The carrier shall be deemed Customer's agent, and any claims for damages in shipment must be filed with the carrier. Illumina is authorized to designate a carrier pursuant to Illumina's standard shipping practices unless otherwise specified in writing by Customer.

8. **Intellectual Property Ownership.** Title to and ownership of the Intellectual Property Rights embodied in the System, Components and Consumables (except for custom content specified by Customer or other third party), and any improved, updated, modified or additional parts thereof, shall at all times remain the property of Illumina or Illumina's licensors. Any feedback, suggestions or improvements by Customer relating to the System or any Component or Consumable ("**Customer Suggestions**") shall be promptly communicated to Illumina, and Customer hereby grants Illumina a worldwide, royalty-free, fully paid-up, non-exclusive, perpetual, irrevocable license, with the right to sublicense, under all Customer's Intellectual Property Rights related to such Customer Suggestions, to use such Customer Suggestions to improve Illumina's products and services, including the System, Components and Consumables, and to make, offer for sale, sell, import, use, reproduce, perform, modify and distribute such products and services. Any data, discoveries and expressions which arise directly out of Customer's use of the System, including without limitations, the data itself and any diagnostic or therapeutic discoveries or inventions arising from such data, shall be the property of Customer, and Customer shall own all right, title, and interest in, to and under such data, discoveries and expressions, including without limitation, all Intellectual Property Rights therein. The System and Consumables may be covered by at least one or more U.S. or foreign patents.

9. **License.** Subject to the terms and conditions of this Agreement, Illumina hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license under Illumina's Intellectual Property Rights related to the System, Components, Consumables and/or the Assays, to use the System, Components, Consumables and to perform the Assays, solely for Customer's internal or commercial research purposes (which includes research services to third parties). Customer acknowledges that the use of the goods provided hereunder beyond such license may require Customer to obtain rights from third parties.

10. **Acknowledgment/Research Use Only.** Customer acknowledges that neither the System nor any of the Components or Consumables have been subjected to regulatory review or approved or cleared by the United States Food and Drug Administration ("**FDA**") or any other entity, or otherwise reviewed, cleared or approved under any statute, law, rule or regulation for any purpose, whether research, commercial, diagnostic or otherwise. Accordingly, Customer acknowledges that the goods provided hereunder are for research use only. Customer further acknowledges that the Arrays and Flow Cells are intended for: (a) single-use only and agrees to use them only once; and (b) use solely with the System, and agrees to use the Arrays and Flow Cells solely with such System. For purposes of Illumina's warranty obligations under Sections 16 and 17, Customer further agrees to use the Cluster Kits, Sample Preparation Kits, Sequencing Kits and Reagent Kits, Custom or Standard Oligo Pools, standard or Custom Arrays, and Flow Cells, solely with Consumables, Components and/or Systems.

11. **Customer Privacy.** Illumina agrees that it shall not sell, trade or otherwise share with any other customer of Illumina any account information of Customer or information regarding the Customer-specified proprietary or custom gene identities, gene sequences, oligo types, sequences or quantities of custom products ordered by Customer pursuant to this Agreement, except where Customer has otherwise agreed in writing. Customer acknowledges and agrees that Illumina may maintain and use a database of orders and account information pertaining to such Custom Oligo Pools solely for its internal purposes of order processing, maintaining records and assisting with future orders of Customer.

12. **Publicity.** Customer agrees that Illumina may publicly identify Customer as a user of its System or Consumables. Except as expressly provided herein, each party agrees not to disclose any financial terms of this Agreement to any third party without the consent of the other party, except as is required by securities or other applicable laws, in which case the disclosing party shall in a timely matter notify the other party and seek confidential treatment to the extent available, and permit the other party to take measures to protect the confidentiality thereof.

13. **Restrictions.**

a. **Transfer.** Customer shall not sell, rent, lease, loan, transfer or assign any System or Hardware containing Software or Derivative Software to any third party unless Customer erases or removes the Software prior to such sale or transfer, except where Illumina has otherwise agreed in writing.

b. **Software.** Customer shall not (i) reproduce, modify or create derivative works of the Software, except as expressly permitted in the relevant EULA provided to Customer, (ii) decompile, reverse engineer or otherwise attempt to gain unauthorized access to the Software source code, the System or any other Components or unbundle any embedded Software from any Hardware, (iii) use the System, the Software or any other Components for third-party training, commercial time-sharing or service bureau use, or for any purpose other than Customer's internal or commercial research purposes (which includes research services to third parties), (iv) remove, alter, cover or obfuscate any copyright, trademark or other proprietary rights notices on or in the System or any Components, or (v) cause, authorize or permit any third party to do any of the foregoing.

c. **Documentation.** Customer shall use the Documentation in accordance with the restrictions set forth therein, which may include but shall not be limited to restrictions against altering, modifying or copying the Documentation or removing the Documentation from the Customer Facility without the prior written approval of Illumina. Any permitted copies of the Documentation shall include Illumina's copyright and other proprietary notices.

d. Illumina Proprietary Sequences. Customer may only use the Illumina proprietary sequences (e.g., IllumiCode/Universal Sequences, Oligonucleotide Capture Sequences, and such other proprietary sequences as Illumina may identify from time to time), with the Consumables and the Assays.

14. **Reservation of Rights.** Illumina reserves all rights not expressly granted in this Agreement, and no licenses are granted by Illumina under this Agreement, whether by implication, estoppel or otherwise, except as expressly set forth herein.

15. **Indemnity.**

a. By Illumina. Except as set forth in Section 15(b), Illumina shall defend, indemnify and hold harmless Customer, and its officers, directors and employees, against any third-party claim or action alleging that the System or any Component, Consumable or Assay, when used in accordance with its Documentation at the Customer Facility, infringes any valid and enforceable Intellectual Property Right, and Illumina shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against such party in connection with any such action. If the System or any Component or Consumable, or any part thereof, becomes, or in Illumina's opinion may become, the subject of an infringement claim against Illumina or Customer, Illumina shall have the right, at its option, to (i) procure for Customer the right to continue using the System or such Component or Consumable, as applicable, (ii) modify or replace the System or such Component or Consumable, as applicable, with substantially equivalent noninfringing products, or (iii) require the return of the System or such Component or Consumable, as applicable, and terminate the license hereunder with respect thereto and refund to Customer the depreciated value of the System or Component as shown in the financial records of Customer. This Section 15(a) states the entire liability of Illumina for any infringement of Intellectual Property Rights.

b. Exclusions. Illumina shall have no obligations to defend, indemnify or hold harmless Customer with respect to any third-party claim or action alleging that (i) the use of the System or of any Component, Consumable or Assay, outside the scope of the license(s) granted by Illumina to Customer for such System, Component, Consumable or Assay, (ii) the use of the System or of any Component, Consumable or Assay, in combination with any other products or services not supplied by Illumina, (iii) the use of the System or of any Component, Consumable or Assay to perform any assay or other process not supplied by Illumina, (iv) any good (or certain aspect thereof) provided hereunder in accordance with specifications or instructions furnished to Illumina by Customer (or by a third party on behalf of Customer), or (v) any Derivative Software or use of Derivative Software, in each of (i), (ii), (iii), (iv) or (v) infringes any third party Intellectual Property Right (each, an "Excluded Claim").

c. By Customer. Customer shall defend, indemnify and hold harmless Illumina, and its officers, directors and employees, against: (i) any Excluded Claim or (ii) any other third party claim or action arising out of the use by Customer of the System, Components or Consumables (other than an infringement claim covered by Section 15(a)), including without limitation actions arising out of Customer's selection or use of biological samples or SNP loci or genes not provided or specified by Illumina or (iii) any breach by Customer of this Agreement, including without limitation Section 15(b); and (iv) any claim or action that arises out of or is the result of any actions Customer has taken based on its analysis, interpretation or use of the information produced by the System; and Customer shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against such party in connection with any such action.

d. Conditions. Each party's indemnification obligations pursuant to this Section shall be subject to the indemnified party (i) notifying the indemnifying party promptly in writing of such action, (ii) giving the indemnifying party exclusive control and authority over the defense and settlement of such action, (iii) not entering into any settlement or compromise of any such action without the indemnifying party's prior written consent and (iv) providing all reasonable assistance to the indemnifying party (provided that the indemnifying party reimburses the indemnified party for its reasonable out-of-pocket expenses incurred in providing such assistance).

e. Third-Party Goods. Notwithstanding anything herein to the contrary, Illumina shall have no indemnification obligations with respect to any goods originating from a third party and provided under this Agreement. Customer's sole right to indemnification with respect to such third party goods shall be pursuant to the original manufacturer's or licensor's indemnity, if any, to Customer, to the extent provided by the original manufacturer or licensor.

16. **Warranty for the System.** Illumina warrants that, for the period set forth in the relevant written quotation provided to Customer by Illumina commencing upon (i) installation of the System or (ii) thirty (30) days after delivery of the System, whichever is earlier (the "Warranty Period"), the System (other than Software, the warranty for which is set forth in Section 16(c)) sold hereunder will conform to Illumina's Specifications in effect as of the date of delivery. This limited warranty extends only to Customer as original purchaser unless otherwise agreed upon in writing by Illumina.

a. Exclusions. The foregoing warranty shall not apply if the System or any Component (i) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling or use contrary to any instructions issued by Illumina, (ii) has been repaired, altered, disassembled or reassembled, or removed from the Customer Facility by persons other than Illumina, other than repair or replacement of a third-party good by an authorized service provider, (iii) has not been installed, operated, repaired and maintained in accordance with the Documentation, (iv) has failed due to an act of God, including but not limited to fire, flood, tornado, earthquake, hurricane, lightning, threat of or actual acts of terrorism or war, or (v) has been used with any third party software or hardware which has not been previously approved in writing by Illumina.

b. Remedy. If during the Warranty Period: (i) Illumina is notified promptly in writing upon discovery of any failure of the System to conform to the warranty set forth in this Section, including a detailed description of such alleged failure, (ii) at Illumina's option, either access to the System is provided to Illumina on-site at the Customer Facility or such applicable Component(s) are returned, transportation charges prepaid, to Illumina's designated manufacturing facility in accordance with Illumina's then-current return procedures, as set forth by Illumina from time to time, and (iii) Illumina's inspections and tests determine that the System indeed fails to conform and has not been subjected to any of the conditions set forth in Section 16(a), then, as Customer's sole remedy and Illumina's sole obligation under the foregoing warranty, Illumina will, at Illumina's option, repair or replace without charge the applicable Component(s). Any Component that has either been repaired or replaced under this warranty shall have warranty coverage for the longer of ninety (90) days or the remaining warranty period. Repair of Components may include the replacement of parts with functionally equivalent, reconditioned or new parts.

c. Software Warranty. Illumina warrants that the Software will substantially conform to its Specifications for the warranty period specified in the EULA provided with the Software; provided that Customer maintains a software release level within one major release of the most current release of the Software. Customer's sole remedy and Illumina's sole obligation under the foregoing warranty shall be for

Illumina to use commercially reasonable efforts to correct any substantial nonconformity of the Software reported in writing by Customer during the warranty period. The foregoing warranty shall not apply to any failure to conform to the Software that is caused by (i) the use or operation of the Software in an environment other than that intended or recommended by Illumina, (ii) modifications to the Software not made or authorized by Illumina, or (iii) third party hardware or software, whether provided by Illumina or any third party. In addition, the foregoing warranty shall not apply to any Software which has been used with any third party hardware or software or to any Derivative Software.

d. **Third-Party Goods.** Notwithstanding anything herein to the contrary, Illumina makes no warranty with respect to any third-party goods provided under this Agreement. Customer's sole remedy with respect to such third-party goods shall be pursuant to the original manufacturer's or licensor's warranty, if any, to Customer, to the extent permitted by the original manufacturer or licensor.

17. **Warranty for Consumables.** Illumina warrants that, for a period of ninety (90) days from the date of delivery of any Consumable (excluding Custom Oligo Pools and Custom Arrays), such Consumable will conform to Illumina's Specifications in effect as of the date of delivery. This limited warranty extends only to Customer, as original purchaser unless otherwise agreed upon in writing by Illumina. As to both Standard Oligo Pools, Custom Oligo Pools and oligos used in the manufacture of Custom Arrays, Illumina only warrants to Customer that the individual oligos incorporated into such oligo products shall be (a) manufactured substantially in accordance with all applicable laws and regulations, (b) undergo Illumina's standard quality control procedures, and (c) conform with the oligo specifications set forth on the relevant purchase order at the time of shipment. The foregoing warranties shall not apply if any such Consumable (a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling or use contrary to any instructions issued by Illumina, (b) has been repaired, altered, disassembled or reassembled, (c) has not been operated, repaired and maintained in accordance with the Documentation, (d) has failed due to an act of God, including but not limited to fire, flood, tornado, earthquake, hurricane, lightning, threat of or actual acts of terrorism or war, or (e) has been used with any third party good not provided under this or any other agreement with Illumina. If during the ninety (90) day warranty period for any Consumable (a) Illumina is notified promptly in writing upon discovery of any failure of such Consumable to conform to the warranty set forth in this Section, (b) such Consumable is returned, transportation charges prepaid, to Illumina's designated manufacturing facility in accordance with Illumina's then-current return procedures, as set forth by Illumina from time to time, and (c) Illumina's inspections and tests determine that such Consumable indeed fails to conform and has not been subjected to any of the conditions set forth in this Section, then, as Customer's sole remedy and Illumina's sole obligation under the foregoing warranty, Illumina will, at Illumina's option, repair or replace without charge such Consumable. Any Consumable that has either been repaired or replaced under this warranty shall have warranty coverage for the longer of thirty (30) days or the remaining warranty period.

EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH HEREIN, ILLUMINA MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SYSTEM OR ANY HARDWARE, SOFTWARE, DOCUMENTATION, COMPONENTS, CONSUMABLES OR ANY PRODUCTS OR SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.

18. **System Support.** During the Warranty Period, Illumina will provide maintenance and support for the System without additional charge. After such Warranty Period, Illumina will provide extended maintenance and support for the System if requested by the Customer, and pursuant to a mutually agreed-upon separate maintenance and support agreement; provided however that maintenance and support, if any, for third party goods shall be obtained by Customer directly from the supplier of the applicable third party good.

19. **Termination for System.** This Agreement shall continue in effect until terminated as provided in this Agreement. If either party breaches a material provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach, the non-breaching party shall have the right to terminate this Agreement at any time. Either party may terminate this Agreement, effective immediately upon written notice, if the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors that is not dismissed within sixty (60) days.

20. **Termination and Cancellation.** Orders for Custom Arrays or Custom Oligo Pools are non-terminable and non-cancelable once an order has been placed. In the event of any bankruptcy or insolvency proceeding commenced by or against Customer, Illumina shall be entitled to cancel any order then outstanding.

21. **Limitation of Liability.** IN NO EVENT SHALL ILLUMINA OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE). ILLUMINA'S TOTAL AND CUMULATIVE LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT RECEIVED BY ILLUMINA FROM CUSTOMER UNDER THIS AGREEMENT. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF ILLUMINA OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

22. **Survival of Obligations.** The provisions of Sections 1 (Definitions), 2 (Applicability of Terms and Conditions), 5 (Financial Terms), 6 (Purchase Money Security Interest), 7 (Delivery/Title/Risk of Loss), 8 (Intellectual Property Ownership), 11 (Customer Privacy), 13 (Restrictions), 15 (Indemnity), 16 and 17 (Warranties), 19 and 20 (Termination), 21 (Limitation of Liability), 22 (Survival of Obligations) and 23 (Miscellaneous), and all payment obligations incurred during the term of this Agreement, shall survive the expiration or termination of this Agreement for any reason. All other rights and obligations of the parties under this Agreement shall cease upon termination or expiration of this Agreement.

23. **Miscellaneous.**

- a. Severability. If any provision of this Agreement is held invalid or unenforceable, such provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.
- b. Waiver. The failure of either party to exercise any right granted herein or to require any performance of any term of this Agreement or the waiver by either party of any breach of this Agreement shall not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any subsequent breach of, the same or any other term of this Agreement.
- c. No Joint Venture or Agency. Nothing in this Agreement shall constitute or create a joint venture, partnership, or any other similar arrangement between the parties. No party is authorized to act as agent for the other party hereunder except as expressly stated in this Agreement.
- d. Export Control. Customer acknowledges and agrees that the System, the Components thereof, the Consumables, or any related technology provided under this Agreement may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder. Customer warrants that it will not export or re-export the System, any Component thereof, any Consumables, or any related technology into any country in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.
- e. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed received when (a) delivered personally; (b) sent by confirmed telex or facsimile (followed by the actual document in air mail/air courier); (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or ten (10) days for international mail); or (d) one (1) day after deposit with a commercial express courier specifying next day delivery or, for international courier packages, two (2) days after deposit with a commercial express courier specifying 2-day delivery, with written verification of receipt.
- f. Assignment. Customer shall not assign or transfer this Agreement or any rights or obligations under this Agreement, whether voluntary, by operation of law or otherwise, without the prior written consent of Illumina; provided, however, that no consent shall be required for any assignment in connection with any merger, acquisition or the sale of all or substantially all of the stock or assets of Customer to a party that (i) agrees in writing to be bound by the terms and conditions of this Agreement, and (ii) is not, in Illumina's reasonable judgment, a competitor of Illumina. Illumina may assign or transfer this agreement to any successor by way of merger, acquisition or sale of all or substantially all of its stock or assets relating to this Agreement. Illumina or any successor may assign all or part of the right to payments under this Agreement. Any assignment or transfer of this Agreement made in contravention of the terms hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties' respective successors and permitted assigns.
- g. Governing Law and Venue. This Agreement and performance by the parties hereunder shall be construed in accordance with the laws of the State of California, U.S.A., without regard to provisions on the conflicts of laws. Customer and Illumina consent to the exclusive jurisdiction of, and venue in, the state and federal courts within San Diego County, California, U.S.A.
- h. Force Majeure. Illumina shall not be responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God, fire, flood, tornado, earthquake, hurricane, lightning, government actions, actual or threatened acts of war, terrorism, civil disturbance or insurrection, sabotage, labor shortages or disputes, failure or delay in delivery by Illumina's suppliers or subcontractors, transportation difficulties, shortage of energy, raw materials or equipment, or Customer's fault or negligence. In the event of any such delay the delivery date shall be deferred for a period equal to the time lost by reason of the delay.
- i. Entire Agreement/Amendments. This Agreement represents the entire agreement between the parties regarding the subject matter hereof and supersedes all prior discussions, communications, agreements, and understandings of any kind and nature between the parties. No amendment to this Agreement will be effective unless in writing and signed by both parties.

ILLUMINA TERMS AND CONDITIONS OF GOODS – EUROPE

- Definitions.** “**Agreement**” means the written quotation provided by Illumina to Customer (as defined in the relevant quotation), including these terms and conditions which form a part thereof. “**Arrays**” means Illumina’s proprietary products based on its BeadArray™ technology, or its VeraCode™ technology, as applicable, whether containing standard, universal, or custom content. “**Assays**” means Illumina’s proprietary assay methods performed using Illumina’s Arrays and Consumables. “**BeadArray System**” means Illumina’s BeadLab or BeadStation 500 genetic analysis system, including accessories or peripherals, based on its proprietary BeadArray technology, comprised of the Components specified in the Specifications. “**BeadXpress System**” means Illumina’s BeadXpress detection system including accessories or peripherals, based on its proprietary VeraCode technology, comprised of the Components specified in the Specifications. “**Cluster Kits**” means a kit supplied by Illumina for amplifying nucleic acid templates on an Illumina Cluster Station. “**Cluster Station**” means Illumina’s cluster station for amplifying nucleic acid templates. “**Components**” means all Hardware, Software and Documentation for the System. “**Consumables**” means all Arrays, Custom Arrays, Custom Oligo Pools, Standard Oligo Pools, Flow Cells, accessories, Sample Preparation Kits, Cluster Kits, Sequencing Kits and Reagent Kits. “**Custom Arrays**” means Arrays specifically made for a Customer from a Custom beadpool. “**Custom Oligo Pool**” (or “Custom OPA”) means an Oligo Pool specially designed for Customer. “**Derivative Software**” means any derivative or modification of Software made by Customer as may be permitted by the relevant EULA. “**Documentation**” means user manuals, protocols or other documentation provided by Illumina under this Agreement related to the use and maintenance of the System or any Components thereof or any Consumables. “**EULA**” means the software end user license agreement provided by Illumina to Customer. “**Facility**” means the Customer facility located at the shipping address indicated on the written quotation provided by Illumina to Customer. “**Final Investment**” means the amount designated as “Final Investment” on the written quotation provided by Illumina to Customer. “**Flow Cell**” means Illumina’s proprietary flow cells supplied for use on Illumina’s Cluster Station and Genome Analyzer. “**Genome Analyzer**” means Illumina’s sequencing instrument. “**Hardware**” means the hardware provided under this Agreement, or as upgrades or options under future agreements, as specified in the Specifications, including any Hardware that is a third-party Component. “**Intellectual Property Rights**” means all patent rights, copyrights, trade secrets, know-how, trademark, service mark and trade dress rights and other intellectual property rights, current or future, under the laws of any jurisdiction, together with all applications therefore and registrations thereto. “**iScan**” means Illumina’s high-resolution scanner that supports imaging of BeadArray-based genetic analysis products, including such accessories or peripherals as are described in the Specifications. “**Oligo Pool**” (or “OPA”) means a standard or custom collection of oligonucleotides required to practice an Assay. “**Reagent Kit**” means a kit containing the chemicals and enzymes supplied by Illumina to practice an Assay. “**Sample Preparation Kit**” means a kit supplied by Illumina containing the reagents required to prepare a nucleic acid template for amplification on an Illumina Cluster Station. “**Sequencing Kit**” means a kit supplied by Illumina containing the sequencing reagents for use on Illumina’s Genome Analyzer. “**SNP**” means single nucleotide polymorphism. “**Software**” means the Software provided under this Agreement, or as upgrades or options under future agreements, or as incorporated or embedded in other Components provided under this Agreement, in object code form, whether or not there is a separate charge thereof, including any Software that is provided from a third party. All references in this Agreement to the “purchase” or “sale” of Software shall mean the acquiring or granting, respectively, of a license to use such Software to exercise the rights pertaining to such Software that are expressly set forth herein. “**Specifications**” means the specifications for the System, Components or Consumables contained in the written quotation provided to Customer. “**Standard Oligo Pool**” (or “Standard OPA”) means an Oligo Pool offered for sale by Illumina as a regular catalog item. “**System**” means Illumina’s BeadArray System, BeadXpress system, Cluster Station, Genome Analyzer, or iScan, as applicable.
- Applicability of Terms and Conditions.** This Agreement shall exclusively govern the ordering, purchase and supply of the System, Components and any Consumables hereunder, and shall override any conflicting, amending and/or additional terms contained in any purchase orders, invoices or similar documents, which are hereby rejected and shall be null and void. Illumina’s failure to object to any such terms shall not constitute a waiver by Illumina, nor constitute acceptance by Illumina of such terms and conditions. All orders or contracts for the System, Components or Consumables must be approved and accepted by Illumina in writing.
- Design and Synthesis of Custom Arrays or Custom Oligo Pools.** Illumina will use commercially reasonable efforts to attempt to collaboratively develop Custom Arrays or Custom Oligo Pools for Customer, according to its standard business practices. Customer may incur separate or additional design and synthesis fees pursuant to such custom product development practices.
- Installation of System or Upgrades or Options.** Illumina shall install the System at the Customer Facility set forth in the Agreement. Such installation is included in the purchase price of the System. Illumina shall install the System, and will use commercially reasonable efforts to schedule and complete installation within thirty (30) days of delivery of all of the Components to the Customer Facility. As to any upgrades or options purchased by Customer, Illumina will provide Customer with any predefined specifications or requirements necessary for their installation. If, in Illumina’s sole discretion, Customer’s Facility does not meet Illumina’s predefined specifications or requirements for the installation of such upgrades or options, Customer agrees to pay Illumina’s hourly service rate to bring the Customer Facility within such compliance for installation of upgrades or options. Illumina and Customer will cooperate with each other to coordinate installation.
- Financial Terms for the System, Components and Consumables.** Unless otherwise authorized in writing by Illumina, the Final Investment price shall be made in full by the Customer within thirty (30) days from the date of the invoice. Invoices will be issued by Illumina upon shipment of the goods provided hereunder. Any amounts not paid when due will accrue interest at the rate of one and one half percent (1.5%) per month, or the maximum amount allowed by law, if lower. In the event that any payment is more than thirty (30) days late, Illumina shall have the right to suspend performance, including shipment, until all payments are made current. Customer shall pay for all costs (including reasonable attorneys’ fees) incurred by Illumina in connection with the collection of late payments. The amount of credit may be changed or credit withdrawn by Illumina at any time. Each accepted purchase order is a separate, independent transaction, and Customer has no right of set-off against other purchase orders or other transactions with Illumina.
- [Reserved]**
- Delivery/Title/Risk of Loss.** For Customers located within the EU, goods shall be delivered DDP (Delivered Duty Paid) to the Customer’s Facility. For Customers located outside the EU, goods shall be delivered DDU (Delivered Duty Unpaid) to the Customer’s Facility. Illumina’s title to each System, Component or Consumable and the risk of loss or damage thereto shall (except for Software) pass to Customer at the time of Illumina’s delivery of such System, Component or Consumable to the Customer’s Facility. For purposes of this Section 7, “EU” shall mean any countries which are members of the European Union as of the date of the Agreement.
- Intellectual Property Ownership.** Title to and ownership of the Intellectual Property Rights embodied in the System, Components and Consumables (except for custom content specified by Customer or other third party), and any improved, updated, modified or

additional parts thereof, shall at all times remain the property of Illumina or Illumina's licensors. Any feedback, suggestions or improvements by Customer relating to the System or any Component or Consumable ("**Customer Suggestions**") shall be promptly communicated to Illumina, and Customer hereby grants Illumina a worldwide, royalty-free, fully paid-up, non-exclusive, perpetual, irrevocable license, with the right to sublicense, under all Customer's Intellectual Property Rights related to such Customer Suggestions, to use such Customer Suggestions to improve Illumina's products and services, including the System, Components and Consumables, and to make, offer for sale, sell, import, use, reproduce, perform, modify and distribute such products and services. Any data, discoveries and expressions which arise directly out of Customer's use of the System, including without limitations, the data itself and any diagnostic or therapeutic discoveries or inventions arising from such data, shall be the property of Customer, and Customer shall own all right, title, and interest in, to and under such data, discoveries and expressions, including without limitation, all Intellectual Property Rights therein. The System and Consumables may be covered by at least one or more U.S. or foreign patents.

9. **License.** Subject to the terms and conditions of this Agreement, Illumina hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license under Illumina's Intellectual Property Rights related to the System, Components, Consumables and/or the Assays, to use the System, Components, Consumables and to perform the Assays, solely for Customer's internal or commercial research purposes (which includes research services to third parties). Customer acknowledges that the use of the goods provided hereunder beyond such license may require Customer to obtain rights from third parties.

10. **Acknowledgment/Research Use Only.** Customer acknowledges that neither the System nor any of the Components or Consumables have been subjected to regulatory review or approved or cleared by the United States Food and Drug Administration ("FDA") or any other entity, or otherwise reviewed, cleared or approved under any statute, law, rule or regulation for any purpose, whether research, commercial, diagnostic or otherwise. Accordingly, Customer acknowledges that the goods provided hereunder are for research use only. Customer further acknowledges that the Arrays and Flow Cells are intended for: (a) single-use only and agrees to use them only once; and (b) use solely with the System, and agrees to use the Arrays and Flow Cells solely with such System. For purposes of Illumina's warranty obligations under Sections 16 and 17, Customer further agrees to use the Cluster Kits, Sample Preparation Kits, Sequencing Kits and Reagent Kits, Custom or Standard Oligo Pools, standard or Custom Arrays and Flow Cells, solely with Consumables, Components and/or Systems.

11. **Customer Privacy.** Illumina agrees that it shall not sell, trade or otherwise share with any other customer of Illumina any account information of Customer or information regarding the Customer-specified proprietary or custom gene identities, gene sequences, oligo types, sequences or quantities of custom products ordered by Customer pursuant to this Agreement, except where Customer has otherwise agreed in writing. Customer acknowledges and agrees that Illumina may maintain and use a database of orders and account information pertaining to such Custom Oligo Pools solely for its internal purposes of order processing, maintaining records and assisting with future orders of Customer.

12. **Publicity.** Customer agrees that Illumina may publicly identify Customer as a user of its System or Consumables. Except as expressly provided herein, each party agrees not to disclose any financial terms of this Agreement to any third party without the consent of the other party, except as is required by securities or other applicable laws, in which case the disclosing party shall in a timely matter notify the other party and seek confidential treatment to the extent available, and permit the other party to take measures to protect the confidentiality thereof.

13. **Restrictions.**

a. **Transfer.** Customer shall not sell, rent, lease, loan, transfer or assign any System or Hardware containing Software or Derivative Software to any third party unless Customer erases or removes the Software prior to such sale or transfer, except where Illumina has otherwise agreed in writing.

b. **Software.** Customer shall not (i) reproduce, modify or create derivative works of the Software, except as expressly permitted in the relevant EULA provided to Customer, (ii) decompile, reverse engineer or otherwise attempt to gain unauthorized access to the Software source code, the System or any other Components or unbundle any embedded Software from any Hardware, (iii) use the System, the Software or any other Components for third-party training, commercial time-sharing or service bureau use, or for any purpose other than Customer's internal or commercial research purposes (which includes research services to third parties), (iv) remove, alter, cover or obfuscate any copyright, trademark or other proprietary rights notices on or in the System or any Components, or (v) cause, authorize or permit any third party to do any of the foregoing.

c. **Documentation.** Customer shall use the Documentation in accordance with the restrictions set forth therein, which may include but shall not be limited to restrictions against altering, modifying or copying the Documentation or removing the Documentation from the Customer Facility without the prior written approval of Illumina. Any permitted copies of the Documentation shall include Illumina's copyright and other proprietary notices.

d. **Illumina Proprietary Sequences.** Customer may only use the Illumina proprietary sequences (e.g., IllumiCode/Universal Sequences, Oligonucleotide Capture Sequences, and such other proprietary sequences as Illumina may identify from time to time), with the Consumables and the Assays.

14. **Reservation of Rights.** Illumina reserves all rights not expressly granted in this Agreement, and no licenses are granted by Illumina under this Agreement, whether by implication, estoppel or otherwise, except as expressly set forth herein.

15. **Indemnity.**

a. **By Illumina.** Except as set forth in Section 15(b), Illumina shall defend, indemnify and hold harmless Customer, and its officers, directors and employees, against any third-party claim or action alleging that the System or any Component, Consumable or Assay, when used in accordance with its Documentation at the Customer Facility, infringes any valid and enforceable Intellectual Property Right, and Illumina shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against such party in connection with any such action. If the System or any Component or Consumable, or any part thereof, becomes, or in Illumina's opinion may become, the subject of an infringement claim against Illumina or Customer, Illumina shall have the right, at its option, to (i) procure for Customer the right to continue using the System or such Component or Consumable, as applicable, (ii) modify or replace the System or such Component or Consumable, as applicable, with substantially equivalent noninfringing products, or (iii) require the return of the System or such Component or Consumable, as applicable, and terminate the license hereunder with respect thereto and refund to Customer the depreciated value of the System or Component as shown in the financial records of Customer. This Section 15(a) states the entire liability of Illumina for any infringement of Intellectual Property Rights.

b. **Exclusions.** Illumina shall have no obligations to defend, indemnify or hold harmless Customer with respect to any third-party claim or action alleging that (i) the use of the System or of any Component, Consumable or Assay, outside the scope of the license(s) granted by Illumina to Customer for such System, Component, Consumable or Assay, (ii) the use of the System or of any Component, Consumable or Assay, in combination with any other products or services not supplied by Illumina, (iii) the use of the System or of any

Component, Consumable or Assay to perform any assay or other process not supplied by Illumina, (iv) any good (or certain aspect thereof) provided hereunder in accordance with specifications or instructions furnished to Illumina by Customer (or by a third party on behalf of Customer), or (v) any Derivative Software or use of Derivative Software, in each of (i), (ii), (iii), (iv) or (v) infringes any third party Intellectual Property Right (each, an “**Excluded Claim**”).

c. By Customer. Customer shall defend, indemnify and hold harmless Illumina, and its officers, directors and employees, against: (i) any Excluded Claim or (ii) any other third party claim or action arising out of the use by Customer of the System, Components or Consumables (other than an infringement claim covered by Section 15(a)), including without limitation actions arising out of Customer’s selection or use of biological samples or SNP loci or genes not provided or specified by Illumina or (iii) any breach by Customer of this Agreement, including without limitation Section 15(b); and (iv) any claim or action that arises out of or is the result of any actions Customer has taken based on its analysis, interpretation or use of the information produced by the System; and Customer shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys’ fees) awarded against such party in connection with any such action.

d. Conditions. Each party’s indemnification obligations pursuant to this Section shall be subject to the indemnified party (i) notifying the indemnifying party promptly in writing of such action, (ii) giving the indemnifying party exclusive control and authority over the defense and settlement of such action, (iii) not entering into any settlement or compromise of any such action without the indemnifying party’s prior written consent and (iv) providing all reasonable assistance to the indemnifying party (provided that the indemnifying party reimburses the indemnified party for its reasonable out-of-pocket expenses incurred in providing such assistance).

e. Third-Party Goods. Notwithstanding anything herein to the contrary, Illumina shall have no indemnification obligations with respect to any goods originating from a third party and provided under this Agreement. Customer’s sole right to indemnification with respect to such third party goods shall be pursuant to the original manufacturer’s or licensor’s indemnity, if any, to Customer, to the extent provided by the original manufacturer or licensor.

16. Warranty for the System. Illumina warrants that, for the period set forth in the relevant written quotation provided to Customer by Illumina commencing upon (i) installation of the System or (ii) thirty (30) days after delivery of the System, whichever is earlier (the “**Warranty Period**”), the System (other than Software, the warranty for which is set forth in Section 16(c)) sold hereunder will conform to Illumina’s Specifications in effect as of the date of delivery. This limited warranty extends only to Customer as original purchaser unless otherwise agreed upon in writing by Illumina.

a. Exclusions. The foregoing warranty shall not apply if the System or any Component (i) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling or use contrary to any instructions issued by Illumina, (ii) has been repaired, altered, disassembled or reassembled, or removed from the Customer Facility by persons other than Illumina, other than repair or replacement of a third-party good by an authorized service provider, (iii) has not been installed, operated, repaired and maintained in accordance with the Documentation, (iv) has failed due to an act of God, including but not limited to fire, flood, tornado, earthquake, hurricane, lightning, threat of or actual acts of terrorism or war, or (v) has been used with any third party software or hardware which has not been previously approved in writing by Illumina.

b. Remedy. If during the Warranty Period: (i) Illumina is notified promptly in writing upon discovery of any failure of the System to conform to the warranty set forth in this Section, including a detailed description of such alleged failure, (ii) at Illumina’s option, either access to the System is provided to Illumina on-site at the Customer Facility or such applicable Component(s) are returned, transportation charges prepaid, to Illumina’s designated manufacturing facility in accordance with Illumina’s then-current return procedures, as set forth by Illumina from time to time, and (iii) Illumina’s inspections and tests determine that the System indeed fails to conform and has not been subjected to any of the conditions set forth in Section 16(a), then, as Customer’s sole remedy and Illumina’s sole obligation under the foregoing warranty, Illumina will, at Illumina’s option, repair or replace without charge the applicable Component(s). Any Component that has either been repaired or replaced under this warranty shall have warranty coverage for the longer of ninety (90) days or the remaining warranty period. Repair of Components may include the replacement of parts with functionally equivalent, reconditioned or new parts.

c. Software Warranty. Illumina warrants that the Software will substantially conform to its Specifications for the warranty period specified in the EULA provided with the Software; provided that Customer maintains a software release level within one major release of the most current release of the Software. Customer’s sole remedy and Illumina’s sole obligation under the foregoing warranty shall be for Illumina to use commercially reasonable efforts to correct any substantial nonconformity of the Software reported in writing by Customer during the warranty period. The foregoing warranty shall not apply to any failure to conform by the Software that is caused by (i) the use or operation of the Software in an environment other than that intended or recommended by Illumina, (ii) modifications to the Software not made or authorized by Illumina, or (iii) third party hardware or software, whether provided by Illumina or any third party. In addition, the foregoing warranty shall not apply to any Software which has been used with any third party hardware or software or to any Derivative Software.

d. Third-Party Goods. Notwithstanding anything herein to the contrary, Illumina makes no warranty with respect to any third-party goods provided under this Agreement. Customer’s sole remedy with respect to such third-party goods shall be pursuant to the original manufacturer’s or licensor’s warranty, if any, to Customer, to the extent permitted by the original manufacturer or licensor.

17. Warranty for Consumables. Illumina warrants that, for a period of ninety (90) days from the date of delivery of any Consumable (excluding Custom Oligo Pools and Custom Arrays), such Consumable will conform to Illumina’s Specifications in effect as of the date of delivery. This limited warranty extends only to Customer, as original purchaser unless otherwise agreed upon in writing by Illumina. As to both Standard Oligo Pools, Custom Oligo Pools and oligos used in the manufacture of Custom Arrays, Illumina only warrants to Customer that the individual oligos incorporated into such oligo products shall be (a) manufactured substantially in accordance with all applicable laws and regulations, (b) undergo Illumina’s standard quality control procedures, and (c) conform with the oligo specifications set forth on the relevant purchase order at the time of shipment. The foregoing warranties shall not apply if any such Consumable (a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling or use contrary to any instructions issued by Illumina, (b) has been repaired, altered, disassembled or reassembled, (c) has not been operated, repaired and maintained in accordance with the Documentation, (d) has failed due to an act of God, including but not limited to fire, flood, tornado, earthquake, hurricane, lightning, threat of or actual acts of terrorism or war, or (e) has been used with any third party good not provided under this or any other agreement with Illumina. If during the ninety (90) day warranty period for any Consumable (a) Illumina is notified promptly in writing upon discovery of any failure of such Consumable to conform to the warranty set forth in this Section, (b) such Consumable is returned, transportation charges prepaid, to Illumina’s designated manufacturing facility in accordance with Illumina’s then-current return procedures, as set forth by Illumina from time to time, and (c) Illumina’s inspections and tests determine that such Consumable indeed fails to conform and has not been subjected to any of the conditions set forth in this

Section, then, as Customer's sole remedy and Illumina's sole obligation under the foregoing warranty, Illumina will, at Illumina's option, repair or replace without charge such Consumable. Any Consumable that has either been repaired or replaced under this warranty shall have warranty coverage for the longer of thirty (30) days or the remaining warranty period.

EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH HEREIN, ILLUMINA MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SYSTEM OR ANY HARDWARE, SOFTWARE, DOCUMENTATION, COMPONENTS, CONSUMABLES OR ANY PRODUCTS OR SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.

18. **System Support.** During the Warranty Period, Illumina will provide maintenance and support for the System without additional charge. After such Warranty Period, Illumina will provide extended maintenance and support for the System if requested by the Customer, and pursuant to a mutually agreed-upon separate maintenance and support agreement; provided however that maintenance and support, if any, for third party goods shall be obtained by Customer directly from the supplier of the applicable third party good.

19. **Termination for System.** This Agreement shall continue in effect until terminated as provided in this Agreement. If either party breaches a material provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach, the non-breaching party shall have the right to terminate this Agreement at any time. Either party may terminate this Agreement, effective immediately upon written notice, if the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors that is not dismissed within sixty (60) days.

20. **Termination and Cancellation.** Orders for Custom Arrays or Custom Oligo Pools are non-terminable and non-cancelable once an order has been placed. In the event of any bankruptcy or insolvency proceeding commenced by or against Customer, Illumina shall be entitled to cancel any order then outstanding.

21. **Limitation of Liability.** IN NO EVENT SHALL ILLUMINA OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE). ILLUMINA'S TOTAL AND CUMULATIVE LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT RECEIVED BY ILLUMINA FROM CUSTOMER UNDER THIS AGREEMENT. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF ILLUMINA OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

22. **Survival of Obligations.** The provisions of Sections 1 (Definitions), 2 (Applicability of Terms and Conditions), 5 (Financial Terms), 7 (Delivery/Title/Risk of Loss), 8 (Intellectual Property Ownership), 11 (Customer Privacy), 13 (Restrictions), 15 (Indemnity), 16 and 17 (Warranties), 19 and 20 (Termination), 21 (Limitation of Liability), 22 (Survival of Obligations) and 23 (Miscellaneous), and all payment obligations incurred during the term of this Agreement, shall survive the expiration or termination of this Agreement for any reason. All other rights and obligations of the parties under this Agreement shall cease upon termination or expiration of this Agreement.

23. **Miscellaneous.**

a. **Severability.** If any provision of this Agreement is held invalid or unenforceable, such provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

b. **Waiver.** The failure of either party to exercise any right granted herein or to require any performance of any term of this Agreement or the waiver by either party of any breach of this Agreement shall not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any subsequent breach of, the same or any other term of this Agreement.

c. **No Joint Venture or Agency.** Nothing in this Agreement shall constitute or create a joint venture, partnership, or any other similar arrangement between the parties. No party is authorized to act as agent for the other party hereunder except as expressly stated in this Agreement.

d. **Export Control.** Customer acknowledges and agrees that the System, the Components thereof, the Consumables, or any related technology provided under this Agreement may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder. Customer warrants that it will not export or re-export the System, any Component thereof, any Consumables, or any related technology into any country in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

e. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be deemed received when (a) delivered personally; (b) sent by confirmed telex or facsimile (followed by the actual document in air mail/air courier); (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or ten (10) days for international mail); or (d) one (1) day after deposit with a commercial express courier specifying next day delivery or, for international courier packages, two (2) days after deposit with a commercial express courier specifying 2-day delivery, with written verification of receipt.

f. **Assignment.** Customer shall not assign or transfer this Agreement or any rights or obligations under this Agreement, whether voluntary, by operation of law or otherwise, without the prior written consent of Illumina; provided, however, that no consent shall be required for any assignment in connection with any merger, acquisition or the sale of all or substantially all of the stock or assets of Customer to a party that (i) agrees in writing to be bound by the terms and conditions of this Agreement, and (ii) is not, in Illumina's reasonable judgment, a competitor of Illumina. Illumina may assign or transfer this agreement to any successor by way of merger, acquisition or sale of all or substantially all of its stock or assets relating to this Agreement. Illumina or any successor may assign all or part of the right to payments under this Agreement. Any assignment or transfer of this Agreement made in contravention of the terms hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties' respective successors and permitted assigns.

g. **Governing Law and Venue.** This Agreement and performance by the parties hereunder shall be construed in accordance with the laws of the country where the Illumina entity named on the quotation is located. Any action or proceeding arising under or relating to this Agreement shall (i) if initiated by Customer, be brought in the courts of the country where the Illumina entity named on the quotation is located, and (ii) if initiated by Illumina, be brought in the jurisdiction in which Customer is located.

h. Force Majeure. Illumina shall not be responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God, fire, flood, tornado, earthquake, hurricane, lightning, government actions, actual or threatened acts of war, terrorism, civil disturbance or insurrection, sabotage, labor shortages or disputes, failure or delay in delivery by Illumina's suppliers or subcontractors, transportation difficulties, shortage of energy, raw materials or equipment, or Customer's fault or negligence. In the event of any such delay the delivery date shall be deferred for a period equal to the time lost by reason of the delay.

i. Entire Agreement/Amendments. This Agreement represents the entire agreement between the parties regarding the subject matter hereof and supersedes all prior discussions, communications, agreements, and understandings of any kind and nature between the parties. No amendment to this Agreement will be effective unless in writing and signed by both parties.

Illumina Terms and Conditions of Sale – Goods – Singapore

- Definitions.** “**Agreement**” means the written quotation provided by Illumina to Customer (as defined in the relevant quotation), including these terms and conditions which form a part thereof. “**Arrays**” means Illumina’s proprietary products based on its BeadArray™ technology, or its VeraCode™ technology, as applicable, whether containing standard, universal, or custom content. “**Assays**” means Illumina’s proprietary assay methods performed using Illumina’s Arrays and Consumables. “**BeadArray System**” means Illumina’s BeadLab or BeadStation 500 genetic analysis system, including accessories or peripherals, based on its proprietary BeadArray technology, comprised of the Components specified in the Specifications. “**BeadXpress System**” means Illumina’s BeadXpress detection system including accessories or peripherals, based on its proprietary VeraCode technology, comprised of the Components specified in the Specifications. “**Cluster Kits**” means a kit supplied by Illumina for amplifying nucleic acid templates on an Illumina Cluster Station. “**Cluster Station**” means Illumina’s cluster station for amplifying nucleic acid templates. “**Components**” means all Hardware, Software and Documentation for the System. “**Consumables**” means all Arrays, Custom Arrays, Custom Oligo Pools, Standard Oligo Pools, Flow Cells, accessories, Sample Preparation Kits, Cluster Kits, Sequencing Kits and Reagent Kits. “**Custom Arrays**” means Arrays specifically made for a Customer from a Custom beadpool. “**Custom Oligo Pool**” (or “Custom OPA”) means an Oligo Pool specially designed for Customer. “**Derivative Software**” means any derivative or modification of Software made by Customer as may permitted by the relevant EULA. “**Documentation**” means user manuals, protocols or other documentation provided by Illumina under this Agreement related to the use and maintenance of the System or any Components thereof or any Consumables. “**EULA**” means the software end user license agreement provided by Illumina to Customer. “**Facility**” means the Customer facility located at the shipping address indicated on the written quotation provided by Illumina to Customer. “**Final Investment**” means the amount designated as “Final Investment” on the written quotation provided by Illumina to Customer. “**Flow Cell**” means Illumina’s proprietary flow cells supplied for use on Illumina’s Cluster Station and Genome Analyzer. “**Genome Analyzer**” means Illumina’s sequencing instrument. “**Hardware**” means the hardware provided under this Agreement, or as upgrades or options under future agreements, as specified in the Specifications, including any Hardware that is a third-party Component. “**Intellectual Property Rights**” means all patent rights, copyrights, trade secrets, know-how, trademark, service mark and trade dress rights and other intellectual property rights, current or future, under the laws of any jurisdiction, together with all applications therefore and registrations thereto. “**iScan**” means Illumina’s high-resolution scanner that supports imaging of BeadArray-based genetic analysis products, including such accessories or peripherals as are described in the Specifications. “**Oligo Pool**” (or “OPA”) means a standard or custom collection of oligonucleotides required to practice an Assay. “**Reagent Kit**” means a kit containing the chemicals and enzymes supplied by Illumina to practice an Assay. “**Sample Preparation Kit**” means a kit supplied by Illumina containing the reagents required to prepare a nucleic acid template for amplification on an Illumina Cluster Station. “**Sequencing Kit**” means a kit supplied by Illumina containing the sequencing reagents for use on Illumina’s Genome Analyzer. “**SNP**” means single nucleotide polymorphism. “**Software**” means the Software provided under this Agreement, or as upgrades or options under future agreements, or as incorporated or embedded in other Components provided under this Agreement, in object code form, whether or not there is a separate charge thereof, including any Software that is provided from a third party. All references in this Agreement to the “purchase” or “sale” of Software shall mean the acquiring or granting, respectively, of a license to use such Software to exercise the rights pertaining to such Software that are expressly set forth herein. “**Specifications**” means the specifications for the System, Components or Consumables contained in the written quotation provided to Customer. “**Standard Oligo Pool**” (or “Standard OPA”) means an Oligo Pool offered for sale by Illumina as a regular catalog item. “**System**” means Illumina’s BeadArray System, BeadXpress system, Cluster Station, Genome Analyzer, or iScan, as applicable. “**Tax**” does not include taxes on the net income of a person.
- Applicability of Terms and Conditions.** This Agreement shall exclusively govern the ordering, purchase and supply of the System, Components and any Consumables hereunder, and shall override any conflicting, amending and/or additional terms contained in any purchase orders, invoices or similar documents, which are hereby rejected and shall be null and void. Illumina’s failure to object to any such terms shall not constitute a waiver by Illumina, nor constitute acceptance by Illumina of such terms and conditions. All orders or contracts for the System, Components or Consumables must be approved and accepted by Illumina in writing.
- Design and Synthesis of Custom Arrays or Custom Oligo Pools.** Illumina will use commercially reasonable efforts to attempt to collaboratively develop Custom Arrays or Custom Oligo Pools for Customer, according to its standard business practices. Customer may incur separate or additional design and synthesis fees pursuant to such custom product development practices.
- Installation of System or Upgrades or Options.** Illumina shall install the System at the Customer Facility set forth in the Agreement. Such installation is included in the purchase price of the System. Illumina shall install the System, and will use commercially reasonable efforts to schedule and complete installation within thirty (30) days of delivery of all of the Components to the Customer Facility. As to any upgrades or options purchased by Customer, Illumina will provide Customer with any predefined specifications or requirements necessary for their installation. If, in Illumina’s sole discretion, Customer’s Facility does not meet Illumina’s predefined specifications or requirements for the installation of such upgrades or options, Customer agrees to pay Illumina’s hourly service rate to bring the Customer Facility within such compliance for installation of upgrades or options. Illumina and Customer will cooperate with each other to coordinate installation.
- Financial Terms for the System, Components and Consumables.** All prices are FOB point of shipment at Illumina’s designated location and Illumina, through its carrier, will deliver the System, Components or Consumables to Customer’s designated premises. Illumina will make arrangements for shipment and will obtain appropriate insurance coverage for each shipment, both of which will be separately invoiced to Customer. All prices are exclusive of shipping and insurance charges, all of which are Customer’s sole responsibility. All prices and other amounts payable to Illumina under this Agreement are exclusive of and are payable without deduction for all sales, use, excise, value added, withholding and other taxes, customs duties, tariffs or charges now or hereafter claimed or imposed by any governmental authority upon the sale of the System, Components or Consumables, all of which will be paid by Customer. In the event Illumina is required to pay any such tax, duty or charge, such amount will be added to the purchase price or subsequently invoiced to the Customer. Prices are subject to revision due to interruptions, engineering changes or changes in quality caused or requested by Customer. Illumina will determine payment terms on a per-order basis and such terms are subject to a credit review by Illumina. Unless otherwise

authorized in writing by Illumina, the Final Investment price shall be made in full by the Customer within thirty (30) days from the date of the invoice. Invoices will be issued by Illumina upon shipment of the goods provided hereunder. Any amounts not paid when due will accrue interest at the rate of one and one half percent (1.5%) per month, or the maximum amount allowed by law, if lower. In the event that any payment is more than thirty (30) days late, Illumina shall have the right to suspend performance, including shipment, until all payments are made current. Customer shall pay for all costs (including reasonable attorneys' fees) incurred by Illumina in connection with the collection of late payments. The amount of credit may be changed or credit withdrawn by Illumina at any time. Each accepted purchase order is a separate, independent transaction, and Customer has no right of set-off against other purchase orders or other transactions with Illumina.

6. **Repossession.** If Customer defaults on any payment which is due to Illumina, Illumina may repossess the System, Components or Consumables, as applicable, without liability to Customer, and Customer will make such products available, permit Illumina or any third party authorized by Illumina to enter upon Customer's premises without prior notice to effect repossession and otherwise cooperate with Illumina. Title to the System, Components or Consumables, as applicable, reverts to Illumina once they have been repossessed. In order to give effect to the foregoing, Customer agrees that notwithstanding the provisions of Section 7 below, Customer shall not (i) affix such products to any part of Customer's premises, (ii) sell or otherwise deal with such products in such a manner so as to affect Customer's title to such products, or (iii) part with possession of such products. Customer, at its expense, shall fully insure such products against all losses or damage until Illumina has been paid in full therefor.

7. **Delivery/Title/Risk of Loss.** All sales are FOB point of shipment at Illumina's designated location, and Illumina's title to each System, Component or Consumable and the risk of loss or damage thereto shall (except for Software), without prejudice to Section 6 above, pass to Customer at the time of Illumina's delivery of such System, Component or Consumable to the carrier. The carrier shall be deemed Customer's agent, and any claims for damages in shipment must be filed with the carrier. Illumina is authorized to designate a carrier pursuant to Illumina's standard shipping practices unless otherwise specified in writing by Customer.

8. **Intellectual Property Ownership.** Title to and ownership of the Intellectual Property Rights embodied in the System, Components and Consumables (except for custom content specified by Customer or other third party), and any improved, updated, modified or additional parts thereof, shall at all times remain the property of Illumina or Illumina's licensors. Any feedback, suggestions or improvements by Customer relating to the System or any Component or Consumable ("**Customer Suggestions**") shall be promptly communicated to Illumina, and Customer hereby grants Illumina a worldwide, royalty-free, fully paid-up, non-exclusive, perpetual, irrevocable license, with the right to sublicense, under all Customer's Intellectual Property Rights related to such Customer Suggestions, to use such Customer Suggestions to improve Illumina's products and services, including the System, Components and Consumables, and to make, offer for sale, sell, import, use, reproduce, perform, modify and distribute such products and services. Any data, discoveries and expressions which arise directly out of Customer's use of the System, including without limitations, the data itself and any diagnostic or therapeutic discoveries or inventions arising from such data, shall be the property of Customer, and Customer shall own all right, title, and interest in, to and under such data, discoveries and expressions, including without limitation, all Intellectual Property Rights therein. The System and Consumables may be covered by at least one or more U.S. or foreign patents.

9. **License.** Subject to the terms and conditions of this Agreement, Illumina hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license under Illumina's Intellectual Property Rights related to the System, Components, Consumables and/or the Assays, to use the System, Components, Consumables and to perform the Assays, solely for Customer's internal or commercial research purposes (which includes research services to third parties). Customer acknowledges that the use of the goods provided hereunder beyond such license may require Customer to obtain rights from third parties.

10. **Acknowledgment/Research Use Only.** Customer acknowledges that neither the System nor any of the Components or Consumables have been subjected to regulatory review or approved or cleared by the United States Food and Drug Administration ("**FDA**") or any other entity or equivalent regulatory authority in any other jurisdiction, or otherwise reviewed, cleared or approved under any statute, law or regulation for any purpose, whether research, commercial, diagnostic or otherwise. Accordingly, Customer acknowledges that the goods provided hereunder are for research use only. Customer further acknowledges that the Arrays and Flow Cells are intended for: (a) single-use only and agrees to use them only once; and (b) use solely with the System, and agrees to use the Arrays and Flow Cells solely with such System. For purposes of Illumina's warranty obligations under Sections 16 and 17, Customer further agrees to use the Cluster Kits, Sample Preparation Kits, Sequencing Kits and Reagent Kits, Custom or Standard Oligo Pools, standard or Custom Arrays, and Flow Cells, solely with Consumables, Components and/or Systems.

11. **Customer Privacy.** Illumina agrees that it shall not sell, trade or otherwise share with any other customer of Illumina any account information of Customer or information regarding the Customer-specified proprietary or custom gene identities, gene sequences, oligo types, sequences or quantities of custom products ordered by Customer pursuant to this Agreement, except where Customer has otherwise agreed in writing. Customer acknowledges and agrees that Illumina may maintain and use a database of orders and account information pertaining to such Custom Oligo Pools solely for its internal purposes of order processing, maintaining records and assisting with future orders of Customer.

12. **Publicity.** Customer agrees that Illumina may publicly identify Customer as a user of its System or Consumables. Except as expressly provided herein, each party agrees not to disclose any financial terms of this Agreement to any third party without the consent of the other party, except as is required by securities or other applicable laws, in which case the disclosing party shall in a timely matter notify the other party and seek confidential treatment to the extent available, and permit the other party to take measures to protect the confidentiality thereof.

13. **Restrictions.**

a. **Transfer.** Customer shall not sell, rent, lease, loan, transfer or assign any System or Hardware containing Software or Derivative Software to any third party unless Customer erases or removes the Software prior to such sale or transfer, except where Illumina has otherwise agreed in writing.

b. **Software.** Customer shall not (i) reproduce, modify or create derivative works of the Software, except as expressly permitted in the relevant EULA provided to Customer, (ii) decompile, reverse engineer or otherwise attempt to gain unauthorized access to the Software source code, the System or any other Components or unbundle any embedded Software from any Hardware, (iii) use the System, the

Software or any other Components for third-party training, commercial time-sharing or service bureau use, or for any purpose other than Customer's internal or commercial research purposes (which includes research services to third parties), (iv) remove, alter, cover or obfuscate any copyright, trademark or other proprietary rights notices on or in the System or any Components, or (v) cause, authorize or permit any third party to do any of the foregoing.

c. Documentation. Customer shall use the Documentation in accordance with the restrictions set forth therein, which may include but shall not be limited to restrictions against altering, modifying or copying the Documentation or removing the Documentation from the Customer Facility without the prior written approval of Illumina. Any permitted copies of the Documentation shall include Illumina's copyright and other proprietary notices.

d. Illumina Proprietary Sequences. Customer may only use the Illumina proprietary sequences (e.g., IllumiCode/Universal Sequences, Oligonucleotide Capture Sequences, and such other proprietary sequences as Illumina may identify from time to time), with the Consumables and the Assays.

14. **Reservation of Rights.** Illumina reserves all rights not expressly granted in this Agreement, and no licenses are granted by Illumina under this Agreement, whether by implication, estoppel or otherwise, except as expressly set forth herein.

15. **Indemnity.**

a. By Illumina. Except as set forth in Section 15(b), Illumina shall defend, indemnify and hold harmless Customer, and its officers, directors and employees, against any third-party claim or action alleging that the System or any Component, Consumable or Assay, when used in accordance with its Documentation at the Customer Facility, infringes any valid and enforceable Intellectual Property Right, and Illumina shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against such party in connection with any such action. If the System or any Component or Consumable, or any part thereof, becomes, or in Illumina's opinion may become, the subject of an infringement claim against Illumina or Customer, Illumina shall have the right, at its option, to (i) procure for Customer the right to continue using the System or such Component or Consumable, as applicable, (ii) modify or replace the System or such Component or Consumable, as applicable, with substantially equivalent noninfringing products, or (iii) require the return of the System or such Component or Consumable, as applicable, and terminate the license hereunder with respect thereto and refund to Customer the depreciated value of the System or Component as shown in the financial records of Customer. To the maximum extent permitted by law, this Section 15(a) states the entire liability of Illumina for any infringement of Intellectual Property Rights.

b. Exclusions. Illumina shall have no obligations to defend, indemnify or hold harmless Customer with respect to any third-party claim or action alleging that (i) the use of the System or of any Component, Consumable or Assay, outside the scope of the license(s) granted by Illumina to Customer for such System, Component, Consumable or Assay, (ii) the use of the System or of any Component, Consumable or Assay, in combination with any other products or services not supplied by Illumina, (iii) the use of the System or of any Component, Consumable or Assay to perform any assay or other process not supplied by Illumina, (iv) any good (or certain aspect thereof) provided hereunder in accordance with specifications or instructions furnished to Illumina by Customer (or by a third party on behalf of Customer), or (v) any Derivative Software or use of Derivative Software, in each of (i), (ii), (iii), (iv) or (v) infringes any third party Intellectual Property Right (each, an "**Excluded Claim**").

c. By Customer. Customer shall defend, indemnify and hold harmless Illumina, and its officers, directors and employees, against: (i) any Excluded Claim or (ii) any other third party claim or action arising out of the use by Customer of the System, Components or Consumables (other than an infringement claim covered by Section 15(a)), including without limitation actions arising out of Customer's selection or use of biological samples or SNP loci or genes not provided or specified by Illumina or (iii) any breach by Customer of this Agreement, including without limitation Section 15(b); and (iv) any claim or action that arises out of or is the result of any actions Customer has taken based on its analysis, interpretation or use of the information produced by the System; and Customer shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against such party in connection with any such action.

d. Conditions. Each party's indemnification obligations pursuant to this Section shall be subject to the indemnified party (i) notifying the indemnifying party promptly in writing of such action, (ii) giving the indemnifying party exclusive control and authority over the defense and settlement of such action, (iii) not entering into any settlement or compromise of any such action without the indemnifying party's prior written consent and (iv) providing all reasonable assistance to the indemnifying party (provided that the indemnifying party reimburses the indemnified party for its reasonable out-of-pocket expenses incurred in providing such assistance).

e. Third-Party Goods. Notwithstanding anything herein to the contrary, Illumina shall have no indemnification obligations with respect to any goods originating from a third party and provided under this Agreement. Customer's sole right to indemnification with respect to such third party goods shall be pursuant to the original manufacturer's or licensor's indemnity, if any, to Customer, to the extent provided by the original manufacturer or licensor.

16. **Warranty for the System.** Illumina warrants that, for the period set forth in the relevant written quotation provided to Customer by Illumina commencing upon (i) installation of the System or (ii) thirty (30) days after delivery of the System, whichever is earlier (the "**Warranty Period**"), the System (other than Software, the warranty for which is set forth in Section 16(c)) sold hereunder will conform to Illumina's Specifications in effect as of the date of delivery. This limited warranty extends only to Customer as original purchaser unless otherwise agreed upon in writing by Illumina.

a. Exclusions. The foregoing warranty shall not apply if the System or any Component (i) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling or use contrary to any instructions issued by Illumina, (ii) has been repaired, altered, disassembled or reassembled, or removed from the Customer Facility by persons other than Illumina, other than repair or replacement of a third-party good by an authorized service provider, (iii) has not been installed, operated, repaired and maintained in accordance with the Documentation, (iv) has failed due to an act of God, including but not limited to fire, flood, tornado, earthquake, hurricane, lightning, threat of or actual acts of terrorism or war, or (v) has been used with any third party software or hardware which has not been previously approved in writing by Illumina.

b. Remedy. If during the Warranty Period: (i) Illumina is notified promptly in writing upon discovery of any failure of the System to conform to the warranty set forth in this Section, including a detailed description of such alleged failure, (ii) at Illumina's option, either access

to the System is provided to Illumina on-site at the Customer Facility or such applicable Component(s) are returned, transportation charges prepaid, to Illumina's designated manufacturing facility in accordance with Illumina's then-current return procedures, as set forth by Illumina from time to time, and (iii) Illumina's inspections and tests determine that the System indeed fails to conform and has not been subjected to any of the conditions set forth in Section 16(a), then, as Customer's sole remedy and Illumina's sole obligation under the foregoing warranty, Illumina will, at Illumina's option, repair or replace without charge the applicable Component(s). Any Component that has either been repaired or replaced under this warranty shall have warranty coverage for the longer of ninety (90) days or the remaining warranty period. Repair of Components may include the replacement of parts with functionally equivalent, reconditioned or new parts.

c. **Software Warranty.** Illumina warrants that the Software will substantially conform to its Specifications for the warranty period specified in the EULA provided with the Software; provided that Customer maintains a software release level within one major release of the most current release of the Software. Customer's sole remedy and Illumina's sole obligation under the foregoing warranty shall be for Illumina to use commercially reasonable efforts to correct any substantial nonconformity of the Software reported in writing by Customer during the warranty period. The foregoing warranty shall not apply to any failure to conform by the Software that is caused by (i) the use or operation of the Software in an environment other than that intended or recommended by Illumina, (ii) modifications to the Software not made or authorized by Illumina, or (iii) third party hardware or software, whether provided by Illumina or any third party. In addition, the foregoing warranty shall not apply to any Software which has been used with any third party hardware or software or to any Derivative Software.

d. **Third-Party Goods.** Notwithstanding anything herein to the contrary, Illumina makes no warranty with respect to any third-party goods provided under this Agreement. Customer's sole remedy with respect to such third-party goods shall be pursuant to the original manufacturer's or licensor's warranty, if any, to Customer, to the extent permitted by the original manufacturer or licensor.

17. **Warranty for Consumables.** Illumina warrants that, for a period of ninety (90) days from the date of delivery of any Consumable (excluding Custom Oligo Pools and Custom Arrays), such Consumable will conform to Illumina's Specifications in effect as of the date of delivery. This limited warranty extends only to Customer, as original purchaser unless otherwise agreed upon in writing by Illumina. As to both Standard Oligo Pools, Custom Oligo Pools and oligos used in the manufacture of Custom Arrays, Illumina only warrants to Customer that the individual oligos incorporated into such oligo products shall be (a) manufactured substantially in accordance with all applicable laws and regulations, (b) undergo Illumina's standard quality control procedures, and (c) conform with the oligo specifications set forth on the relevant purchase order at the time of shipment. The foregoing warranties shall not apply if any such Consumable (a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling or use contrary to any instructions issued by Illumina, (b) has been repaired, altered, disassembled or reassembled, (c) has not been operated, repaired and maintained in accordance with the Documentation, (d) has failed due to an act of God, including but not limited to fire, flood, tornado, earthquake, hurricane, lightning, threat of or actual acts of terrorism or war, or (e) has been used with any third party good not provided under this or any other agreement with Illumina. If during the ninety (90) day warranty period for any Consumable (a) Illumina is notified promptly in writing upon discovery of any failure of such Consumable to conform to the warranty set forth in this Section, (b) such Consumable is returned, transportation charges prepaid, to Illumina's designated manufacturing facility in accordance with Illumina's then-current return procedures, as set forth by Illumina from time to time, and (c) Illumina's inspections and tests determine that such Consumable indeed fails to conform and has not been subjected to any of the conditions set forth in this Section, then, as Customer's sole remedy and Illumina's sole obligation under the foregoing warranty, Illumina will, at Illumina's option, repair or replace without charge such Consumable. Any Consumable that has either been repaired or replaced under this warranty shall have warranty coverage for the longer of thirty (30) days or the remaining warranty period.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH HEREIN, ILLUMINA MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SYSTEM OR ANY HARDWARE, SOFTWARE, DOCUMENTATION, COMPONENTS, CONSUMABLES OR ANY PRODUCTS OR SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.

18. **System Support.** During the Warranty Period, Illumina will provide maintenance and support for the System without additional charge. After such Warranty Period, Illumina will provide extended maintenance and support for the System if requested by the Customer, and pursuant to a mutually agreed-upon separate maintenance and support agreement; provided however that maintenance and support, if any, for third party goods shall be obtained by Customer directly from the supplier of the applicable third party good.

19. **Termination for System.** This Agreement shall continue in effect until terminated as provided in this Agreement. If either party breaches a material provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach, the non-breaching party shall have the right to terminate this Agreement at any time. Either party may terminate this Agreement, effective immediately upon written notice, if the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors that is not dismissed within sixty (60) days.

20. **Termination and Cancellation.** Orders for Custom Arrays or Custom Oligo Pools are non-terminable and non-cancelable once an order has been placed. In the event of any bankruptcy or insolvency proceeding commenced by or against Customer, Illumina shall be entitled to cancel any order then outstanding.

21. **Limitation of Liability.** IN NO EVENT SHALL ILLUMINA OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE). ILLUMINA'S TOTAL AND CUMULATIVE LIABILITY ARISING

UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT RECEIVED BY ILLUMINA FROM CUSTOMER UNDER THIS AGREEMENT. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF ILLUMINA OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

22. **Survival of Obligations.** The provisions of Sections 1 (Definitions), 2 (Applicability of Terms and Conditions), 5 (Financial Terms), 6 (Purchase Money Security Interest), 7 (Delivery/Title/Risk of Loss), 8 (Intellectual Property Ownership), 11 (Customer Privacy), 13 (Restrictions), 15 (Indemnity), 16 and 17 (Warranties), 19 and 20 (Termination), 21 (Limitation of Liability), 22 (Survival of Obligations) and 23 (Miscellaneous), and all payment obligations incurred during the term of this Agreement, shall survive the expiration or termination of this Agreement for any reason. All other rights and obligations of the parties under this Agreement shall cease upon termination or expiration of this Agreement.

23. **Miscellaneous.**

a. **Severability.** If any provision of this Agreement is held invalid or unenforceable, such provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

b. **Waiver.** The failure of either party to exercise any right granted herein or to require any performance of any term of this Agreement or the waiver by either party of any breach of this Agreement shall not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any subsequent breach of, the same or any other term of this Agreement.

c. **No Joint Venture or Agency.** Nothing in this Agreement shall constitute or create a joint venture, partnership, or any other similar arrangement between the parties. No party is authorized to act as agent for the other party hereunder except as expressly stated in this Agreement.

d. **Export Control.** Customer acknowledges and agrees that the System, the Components thereof, the Consumables, or any related technology provided under this Agreement may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder. Customer warrants that it will not export or re-export the System, any Component thereof, any Consumables, or any related technology into any country in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

e. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be deemed received when (a) delivered personally; (b) sent by confirmed telex or facsimile (followed by the actual document in air mail/air courier); (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or ten (10) days for international mail); or (d) one (1) day after deposit with a commercial express courier specifying next day delivery or, for international courier packages, two (2) days after deposit with a commercial express courier specifying 2-day delivery, with written verification of receipt.

f. **Assignment.** Customer shall not assign or transfer this Agreement or any rights or obligations under this Agreement, whether voluntary, by operation of law or otherwise, without the prior written consent of Illumina; provided, however, that no consent shall be required for any assignment in connection with any merger, acquisition or the sale of all or substantially all of the stock or assets of Customer to a party that (i) agrees in writing to be bound by the terms and conditions of this Agreement, and (ii) is not, in Illumina's reasonable judgment, a competitor of Illumina. Illumina may assign or transfer this agreement to any successor by way of merger, acquisition or sale of all or substantially all of its stock or assets relating to this Agreement. Illumina or any successor may assign all or part of the right to payments under this Agreement. Any assignment or transfer of this Agreement made in contravention of the terms hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties' respective successors and permitted assigns.

g. **Governing Law and Venue.** This Agreement and performance by the parties hereunder shall be construed in accordance with the laws of the country/state where the Illumina entity named on the quotation is located. Any action or proceeding arising under or relating to this Agreement shall (i) if initiated by Customer, be brought in the courts of the country/state where the Illumina entity named on the quotation is located, and (ii) if initiated by Illumina, be brought in the jurisdiction in which Customer is located.

h. **Force Majeure.** Illumina shall not be responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God, fire, flood, tornado, earthquake, hurricane, lightning, government actions, actual or threatened acts of war, terrorism, civil disturbance or insurrection, sabotage, labor shortages or disputes, failure or delay in delivery by Illumina's suppliers or subcontractors, transportation difficulties, shortage of energy, raw materials or equipment, or Customer's fault or negligence. In the event of any such delay the delivery date shall be deferred for a period equal to the time lost by reason of the delay.

i. **Entire Agreement/Amendments.** This Agreement represents the entire agreement between the parties regarding the subject matter hereof and supersedes all prior discussions, communications, agreements, and understandings of any kind and nature between the parties. No amendment to this Agreement will be effective unless in writing and signed by both parties.

Illumina Terms and Conditions of Sale – AUS/NZ Goods

- Definitions.** “**Agreement**” means the written quotation provided by Illumina to Customer (as defined in the relevant quotation), including these terms and conditions which form a part thereof. “**Arrays**” means Illumina’s proprietary products based on its BeadArray™ technology, or its VeraCode™ technology, as applicable, whether containing standard, universal, or custom content. “**Assays**” means Illumina’s proprietary assay methods performed using Illumina’s Arrays and Consumables. “**BeadArray System**” means Illumina’s BeadLab or BeadStation 500 genetic analysis system, including accessories or peripherals, based on its proprietary BeadArray technology, comprised of the Components specified in the Specifications. “**BeadXpress System**” means Illumina’s BeadXpress detection system including accessories or peripherals, based on its proprietary VeraCode technology, comprised of the Components specified in the Specifications. “**Cluster Kits**” means a kit supplied by Illumina for amplifying nucleic acid templates on an Illumina Cluster Station. “**Cluster Station**” means Illumina’s cluster station for amplifying nucleic acid templates. “**Components**” means all Hardware, Software and Documentation for the System. “**Consumables**” means all Arrays, Custom Arrays, Custom Oligo Pools, Standard Oligo Pools, Flow Cells, accessories, Sample Preparation Kits, Cluster Kits, Sequencing Kits and Reagent Kits. “**Custom Arrays**” means Arrays specifically made for a Customer from a Custom beadpool. “**Custom Oligo Pool**” (or “Custom OPA”) means an Oligo Pool specially designed for Customer. “**Derivative Software**” means any derivative or modification of Software made by Customer as may permitted by the relevant EULA. “**Documentation**” means user manuals, protocols or other documentation provided by Illumina under this Agreement related to the use and maintenance of the System or any Components thereof or any Consumables. “**EULA**” means the software end user license agreement provided by Illumina to Customer. “**Facility**” means the Customer facility located at the shipping address indicated on the written quotation provided by Illumina to Customer. “**Final Investment**” means the amount designated as “Final Investment” on the written quotation provided by Illumina to Customer. “**Flow Cell**” means Illumina’s proprietary flow cells supplied for use on Illumina’s Cluster Station and Genome Analyzer. “**Genome Analyzer**” means Illumina’s sequencing instrument. “**Hardware**” means the hardware provided under this Agreement, or as upgrades or options under future agreements, as specified in the Specifications, including any Hardware that is a third-party Component. “**Intellectual Property Rights**” means all patent rights, copyrights, trade secrets, know-how, trademark, service mark and trade dress rights and other intellectual property rights, current or future, under the laws of any jurisdiction, together with all applications therefore and registrations thereto. “**iScan**” means Illumina’s high-resolution scanner that supports imaging of BeadArray-based genetic analysis products, including such accessories or peripherals as are described in the Specifications. “**Oligo Pool**” (or “OPA”) means a standard or custom collection of oligonucleotides required to practice an Assay. “**Reagent Kit**” means a kit containing the chemicals and enzymes supplied by Illumina to practice an Assay. “**Sample Preparation Kit**” means a kit supplied by Illumina containing the reagents required to prepare a nucleic acid template for amplification on an Illumina Cluster Station. “**Sequencing Kit**” means a kit supplied by Illumina containing the sequencing reagents for use on Illumina’s Genome Analyzer. “**SNP**” means single nucleotide polymorphism. “**Software**” means the Software provided under this Agreement, or as upgrades or options under future agreements, or as incorporated or embedded in other Components provided under this Agreement, in object code form, whether or not there is a separate charge thereof, including any Software that is provided from a third party. All references in this Agreement to the “purchase” or “sale” of Software shall mean the acquiring or granting, respectively, of a license to use such Software to exercise the rights pertaining to such Software that are expressly set forth herein. “**Specifications**” means the specifications for the System, Components or Consumables contained in the written quotation provided to Customer. “**Standard Oligo Pool**” (or “Standard OPA”) means an Oligo Pool offered for sale by Illumina as a regular catalog item. “**System**” means Illumina’s BeadArray System, BeadXpress system, Cluster Station, Genome Analyzer, or iScan, as applicable. “**Tax**” does not include taxes on the net income of a person.
- Applicability of Terms and Conditions.** This Agreement shall exclusively govern the ordering, purchase and supply of the System, Components and any Consumables hereunder, and shall override any conflicting, amending and/or additional terms contained in any purchase orders, invoices or similar documents, which are hereby rejected and shall be null and void. Illumina’s failure to object to any such terms shall not constitute a waiver by Illumina, nor constitute acceptance by Illumina of such terms and conditions. All orders or contracts for the System, Components or Consumables must be approved and accepted by Illumina in writing.
- Design and Synthesis of Custom Arrays or Custom Oligo Pools.** Illumina will use commercially reasonable efforts to attempt to collaboratively develop Custom Arrays or Custom Oligo Pools for Customer, according to its standard business practices. Customer may incur separate or additional design and synthesis fees pursuant to such custom product development practices.
- Installation of System or Upgrades or Options.** Illumina shall install the System at the Customer Facility set forth in the Agreement. Such installation is included in the purchase price of the System. Illumina shall install the System, and will use commercially reasonable efforts to schedule and complete installation within thirty (30) days of delivery of all of the Components to the Customer Facility. As to any upgrades or options purchased by Customer, Illumina will provide Customer with any predefined specifications or requirements necessary for their installation. If, in Illumina’s sole discretion, Customer’s Facility does not meet Illumina’s predefined specifications or requirements for the installation of such upgrades or options, Customer agrees to pay Illumina’s hourly service rate to bring the Customer Facility within such compliance for installation of upgrades or options. Illumina and Customer will cooperate with each other to coordinate installation.
- Financial Terms for the System, Components and Consumables.** All prices are DDU (Delivered Duty Unpaid) to the Customer’s Facility. Illumina will make arrangements for shipment and will obtain appropriate insurance coverage for each shipment. All prices are inclusive of shipping and insurance charges. All prices and other amounts payable to Illumina under this Agreement are exclusive of and are payable without deduction for all sales, use, excise, value added, GST (goods and services tax), withholding and other taxes, customs duties, tariffs or charges now or hereafter claimed or imposed by any governmental authority upon the sale of the System, Components or Consumables, all of which will be paid by Customer. In the event Illumina is required to pay any such tax, duty or charge, such amount will be added to the purchase price or subsequently invoiced to the Customer. Prices are subject to revision due to interruptions, engineering changes or changes in quality caused or requested by Customer. Illumina will determine payment terms on a per-order basis and such terms are subject to a credit review by Illumina. Unless otherwise authorized in writing by Illumina, the Final Investment price shall be made in full by the Customer within thirty (30) days from the date of the invoice. Invoices will be issued by Illumina upon shipment of the goods provided hereunder. Any amounts not paid when due will accrue interest at the rate of one and one half percent (1.5%) per month, or the

maximum amount allowed by law, if lower. In the event that any payment is more than thirty (30) days late, Illumina shall have the right to suspend performance, including shipment, until all payments are made current. Customer shall pay for all costs (including reasonable attorneys' fees) incurred by Illumina in connection with the collection of late payments. The amount of credit may be changed or credit withdrawn by Illumina at any time. Each accepted purchase order is a separate, independent transaction, and Customer has no right of set-off against other purchase orders or other transactions with Illumina.

For New Zealand Customers Only: Illumina and Customer agree that subsection 8(4) Goods and Services Tax Act 1985 does not apply to supplies made by Illumina. The Customer agrees to pay the agreed price, and any applicable GST, charged in respect of the goods sold to Customer.

6. **Repossession.** If Customer defaults on any payment which is due to Illumina, Illumina may repossess the System, Components or Consumables, as applicable, without liability to Customer, and Customer will make such products available, permit Illumina or any third party authorized by Illumina to enter upon Customer's premises without prior notice to effect repossession and otherwise cooperate with Illumina. Title to the System, Components or Consumables, as applicable, reverts to Illumina once they have been repossessed. In order to give effect to the foregoing, Customer agrees that notwithstanding the provisions of Section 7 below, Customer shall not (i) affix such products to any part of Customer's premises, (ii) sell or otherwise deal with such products in such a manner so as to affect Customer's title to such products, or (iii) part with possession of such products. Customer, at its expense, shall fully insure such products against all losses or damage until Illumina has been paid in full therefor.

7. **Delivery/Title/Risk of Loss.** All sales are DDU (Delivered Duty Unpaid) to the Customer's Facility, and Illumina's title to each System, Component or Consumable and the risk of loss or damage thereto shall (except for Software) pass to Customer at the time of Illumina's delivery of such System, Component or Consumable to the Customer's Facility. .

8. **Intellectual Property Ownership.** Title to and ownership of the Intellectual Property Rights embodied in the System, Components and Consumables (except for custom content specified by Customer or other third party), and any improved, updated, modified or additional parts thereof, shall at all times remain the property of Illumina or Illumina's licensors. Any feedback, suggestions or improvements by Customer relating to the System or any Component or Consumable ("**Customer Suggestions**") shall be promptly communicated to Illumina, and Customer hereby grants Illumina a worldwide, royalty-free, fully paid-up, non-exclusive, perpetual, irrevocable license, with the right to sublicense, under all Customer's Intellectual Property Rights related to such Customer Suggestions, to use such Customer Suggestions to improve Illumina's products and services, including the System, Components and Consumables, and to make, offer for sale, sell, import, use, reproduce, perform, modify and distribute such products and services. Any data, discoveries and expressions which arise directly out of Customer's use of the System, including without limitations, the data itself and any diagnostic or therapeutic discoveries or inventions arising from such data, shall be the property of Customer, and Customer shall own all right, title, and interest in, to and under such data, discoveries and expressions, including without limitation, all Intellectual Property Rights therein. The System and Consumables may be covered by at least one or more U.S. or foreign patents.

9. **License.** Subject to the terms and conditions of this Agreement, Illumina hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license under Illumina's Intellectual Property Rights related to the System, Components, Consumables and/or the Assays, to use the System, Components, Consumables and to perform the Assays, solely for Customer's internal or commercial research purposes (which includes research services to third parties). Customer acknowledges that the use of the goods provided hereunder beyond such license may require Customer to obtain rights from third parties.

10. **Acknowledgment/Research Use Only.** Customer acknowledges that neither the System nor any of the Components or Consumables have been subjected to regulatory review or approved or cleared by the United States Food and Drug Administration ("**FDA**"), the Australian Therapeutic Goods Administration or any other entity or equivalent regulatory authority in any other jurisdiction, or otherwise reviewed, cleared or approved under any statute, law, rule or regulation for any purpose, whether research, commercial, diagnostic or otherwise. Accordingly, Customer acknowledges that the goods provided hereunder are for research use only. Customer further acknowledges that the Arrays and Flow Cells are intended for: (a) single-use only and agrees to use them only once; and (b) use solely with the System, and agrees to use the Arrays and Flow Cells solely with such System. For purposes of Illumina's warranty obligations under Sections 16 and 17, Customer further agrees to use the Cluster Kits, Sample Preparation Kits, Sequencing Kits and Reagent Kits, Custom or Standard Oligo Pools, standard or Custom Arrays, and Flow Cells, solely with Consumables, Components and/or Systems.

11. **Customer Privacy.** Illumina agrees that it shall not sell, trade or otherwise share with any other customer of Illumina any account information of Customer or information regarding the Customer-specified proprietary or custom gene identities, gene sequences, oligo types, sequences or quantities of custom products ordered by Customer pursuant to this Agreement, except where Customer has otherwise agreed in writing. Customer acknowledges and agrees that Illumina may maintain and use a database of orders and account information pertaining to such Custom Oligo Pools solely for its internal purposes of order processing, maintaining records and assisting with future orders of Customer.

12. **Publicity.** Customer agrees that Illumina may publicly identify Customer as a user of its System or Consumables. Except as expressly provided herein, each party agrees not to disclose any financial terms of this Agreement to any third party without the consent of the other party, except as is required by securities or other applicable laws, in which case the disclosing party shall in a timely matter notify the other party and seek confidential treatment to the extent available, and permit the other party to take measures to protect the confidentiality thereof.

13. **Restrictions.**

a. **Transfer.** Customer shall not sell, rent, lease, loan, transfer or assign any System or Hardware containing Software or Derivative Software to any third party unless Customer erases or removes the Software prior to such sale or transfer, except where Illumina has otherwise agreed in writing.

b. **Software.** Customer shall not (i) reproduce, modify or create derivative works of the Software, except as expressly permitted in the relevant EULA provided to Customer, (ii) decompile, reverse engineer or otherwise attempt to gain unauthorized access to the Software source code, the System or any other Components or unbundle any embedded Software from any Hardware, (iii) use the System, the Software or any other Components for third-party training, commercial time-sharing or service bureau use, or for any purpose other than Customer's internal or commercial research purposes (which includes research services to third parties), (iv) remove, alter, cover or

obfuscate any copyright, trademark or other proprietary rights notices on or in the System or any Components, or (v) cause, authorize or permit any third party to do any of the foregoing.

c. Documentation. Customer shall use the Documentation in accordance with the restrictions set forth therein, which may include but shall not be limited to restrictions against altering, modifying or copying the Documentation or removing the Documentation from the Customer Facility without the prior written approval of Illumina. Any permitted copies of the Documentation shall include Illumina's copyright and other proprietary notices.

d. Illumina Proprietary Sequences. Customer may only use the Illumina proprietary sequences (e.g., IllumiCode/Universal Sequences, Oligonucleotide Capture Sequences, and such other proprietary sequences as Illumina may identify from time to time), with the Consumables and the Assays.

14. **Reservation of Rights.** Illumina reserves all rights not expressly granted in this Agreement, and no licenses are granted by Illumina under this Agreement, whether by implication, estoppel or otherwise, except as expressly set forth herein.

15. **Indemnity.**

a. By Illumina. Except as set forth in Section 15(b), Illumina shall defend, indemnify and hold harmless Customer, and its officers, directors and employees, against any third-party claim or action alleging that the System or any Component, Consumable or Assay, when used in accordance with its Documentation at the Customer Facility, infringes any valid and enforceable Intellectual Property Right, and Illumina shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against such party in connection with any such action. If the System or any Component or Consumable, or any part thereof, becomes, or in Illumina's opinion may become, the subject of an infringement claim against Illumina or Customer, Illumina shall have the right, at its option, to (i) procure for Customer the right to continue using the System or such Component or Consumable, as applicable, (ii) modify or replace the System or such Component or Consumable, as applicable, with substantially equivalent noninfringing products, or (iii) require the return of the System or such Component or Consumable, as applicable, and terminate the license hereunder with respect thereto and refund to Customer the depreciated value of the System or Component as shown in the financial records of Customer. To the maximum extent permitted by law, this Section 15(a) states the entire liability of Illumina for any infringement of Intellectual Property Rights.

b. Exclusions. Illumina shall have no obligations to defend, indemnify or hold harmless Customer with respect to any third-party claim or action alleging that (i) the use of the System or of any Component, Consumable or Assay, outside the scope of the license(s) granted by Illumina to Customer for such System, Component, Consumable or Assay, (ii) the use of the System or of any Component, Consumable or Assay, in combination with any other products or services not supplied by Illumina, (iii) the use of the System or of any Component, Consumable or Assay to perform any assay or other process not supplied by Illumina, (iv) any good (or certain aspect thereof) provided hereunder in accordance with specifications or instructions furnished to Illumina by Customer (or by a third party on behalf of Customer), or (v) any Derivative Software or use of Derivative Software, in each of (i), (ii), (iii), (iv) or (v) infringes any third party Intellectual Property Right (each, an "**Excluded Claim**").

c. By Customer. Customer shall defend, indemnify and hold harmless Illumina, and its officers, directors and employees, against: (i) any Excluded Claim or (ii) any other third party claim or action arising out of the use by Customer of the System, Components or Consumables (other than an infringement claim covered by Section 15(a)), including without limitation actions arising out of Customer's selection or use of biological samples or SNP loci or genes not provided or specified by Illumina or (iii) any breach by Customer of this Agreement, including without limitation Section 15(b); and (iv) any claim or action that arises out of or is the result of any actions Customer has taken based on its analysis, interpretation or use of the information produced by the System; and Customer shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against such party in connection with any such action.

d. Conditions. Each party's indemnification obligations pursuant to this Section shall be subject to the indemnified party (i) notifying the indemnifying party promptly in writing of such action, (ii) giving the indemnifying party exclusive control and authority over the defense and settlement of such action, (iii) not entering into any settlement or compromise of any such action without the indemnifying party's prior written consent and (iv) providing all reasonable assistance to the indemnifying party (provided that the indemnifying party reimburses the indemnified party for its reasonable out-of-pocket expenses incurred in providing such assistance).

e. Third-Party Goods. Notwithstanding anything herein to the contrary, Illumina shall have no indemnification obligations with respect to any goods originating from a third party and provided under this Agreement. Customer's sole right to indemnification with respect to such third party goods shall be pursuant to the original manufacturer's or licensor's indemnity, if any, to Customer, to the extent provided by the original manufacturer or licensor.

16. **Warranty for the System.** Illumina warrants that, for the period set forth in the relevant written quotation provided to Customer by Illumina commencing upon (i) installation of the System or (ii) thirty (30) days after delivery of the System, whichever is earlier (the "**Warranty Period**"), the System (other than Software, the warranty for which is set forth in Section 16(c)) sold hereunder will conform to Illumina's Specifications in effect as of the date of delivery. This limited warranty extends only to Customer as original purchaser unless otherwise agreed upon in writing by Illumina.

a. Exclusions. The foregoing warranty shall not apply if the System or any Component (i) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling or use contrary to any instructions issued by Illumina, (ii) has been repaired, altered, disassembled or reassembled, or removed from the Customer Facility by persons other than Illumina, other than repair or replacement of a third-party good by an authorized service provider, (iii) has not been installed, operated, repaired and maintained in accordance with the Documentation, (iv) has failed due to an act of God, including but not limited to fire, flood, tornado, earthquake, hurricane, lightning, threat of or actual acts of terrorism or war, or (v) has been used with any third party software or hardware which has not been previously approved in writing by Illumina.

b. Remedy. If during the Warranty Period: (i) Illumina is notified promptly in writing upon discovery of any failure of the System to conform to the warranty set forth in this Section, including a detailed description of such alleged failure, (ii) at Illumina's option, either access to the System is provided to Illumina on-site at the Customer Facility or such applicable Component(s) are returned, transportation charges prepaid, to Illumina's designated manufacturing facility in accordance with Illumina's then-current return procedures, as set forth by Illumina from time to time, and (iii) Illumina's inspections and tests determine that the System indeed fails to conform and has not been subjected to

any of the conditions set forth in Section 16(a), then, as Customer's sole remedy and Illumina's sole obligation under the foregoing warranty, Illumina will, at Illumina's option, repair or replace without charge the applicable Component(s). Any Component that has either been repaired or replaced under this warranty shall have warranty coverage for the longer of ninety (90) days or the remaining warranty period. Repair of Components may include the replacement of parts with functionally equivalent, reconditioned or new parts.

c. **Software Warranty.** Illumina warrants that the Software will substantially conform to its Specifications for the warranty period specified in the EULA provided with the Software; provided that Customer maintains a software release level within one major release of the most current release of the Software. Customer's sole remedy and Illumina's sole obligation under the foregoing warranty shall be for Illumina to use commercially reasonable efforts to correct any substantial nonconformity of the Software reported in writing by Customer during the warranty period. The foregoing warranty shall not apply to any failure to conform by the Software that is caused by (i) the use or operation of the Software in an environment other than that intended or recommended by Illumina, (ii) modifications to the Software not made or authorized by Illumina, or (iii) third party hardware or software, whether provided by Illumina or any third party. In addition, the foregoing warranty shall not apply to any Software which has been used with any third party hardware or software or to any Derivative Software.

d. **Third-Party Goods.** Notwithstanding anything herein to the contrary, Illumina makes no warranty with respect to any third-party goods provided under this Agreement. Customer's sole remedy with respect to such third-party goods shall be pursuant to the original manufacturer's or licensor's warranty, if any, to Customer, to the extent permitted by the original manufacturer or licensor.

17. **Warranty for Consumables.** Illumina warrants that, for a period of ninety (90) days from the date of delivery of any Consumable (excluding Custom Oligo Pools and Custom Arrays), such Consumable will conform to Illumina's Specifications in effect as of the date of delivery. This limited warranty extends only to Customer, as original purchaser unless otherwise agreed upon in writing by Illumina. As to both Standard Oligo Pools, Custom Oligo Pools and oligos used in the manufacture of Custom Arrays, Illumina only warrants to Customer that the individual oligos incorporated into such oligo products shall be (a) manufactured substantially in accordance with all applicable laws and regulations, (b) undergo Illumina's standard quality control procedures, and (c) conform with the oligo specifications set forth on the relevant purchase order at the time of shipment. The foregoing warranties shall not apply if any such Consumable (a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling or use contrary to any instructions issued by Illumina, (b) has been repaired, altered, disassembled or reassembled, (c) has not been operated, repaired and maintained in accordance with the Documentation, (d) has failed due to an act of God, including but not limited to fire, flood, tornado, earthquake, hurricane, lightning, threat of or actual acts of terrorism or war, or (e) has been used with any third party good not provided under this or any other agreement with Illumina. If during the ninety (90) day warranty period for any Consumable (a) Illumina is notified promptly in writing upon discovery of any failure of such Consumable to conform to the warranty set forth in this Section, (b) such Consumable is returned, transportation charges prepaid, to Illumina's designated manufacturing facility in accordance with Illumina's then-current return procedures, as set forth by Illumina from time to time, and (c) Illumina's inspections and tests determine that such Consumable indeed fails to conform and has not been subjected to any of the conditions set forth in this Section, then, as Customer's sole remedy and Illumina's sole obligation under the foregoing warranty, Illumina will, at Illumina's option, repair or replace without charge such Consumable. Any Consumable that has either been repaired or replaced under this warranty shall have warranty coverage for the longer of thirty (30) days or the remaining warranty period.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH HEREIN, ILLUMINA MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SYSTEM OR ANY HARDWARE, SOFTWARE, DOCUMENTATION, COMPONENTS, CONSUMABLES OR ANY PRODUCTS OR SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.

18. **System Support.** During the Warranty Period, Illumina will provide maintenance and support for the System without additional charge. After such Warranty Period, Illumina will provide extended maintenance and support for the System if requested by the Customer, and pursuant to a mutually agreed-upon separate maintenance and support agreement; provided however that maintenance and support, if any, for third party goods shall be obtained by Customer directly from the supplier of the applicable third party good.

19. **Termination for System.** This Agreement shall continue in effect until terminated as provided in this Agreement. If either party breaches a material provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach, the non-breaching party shall have the right to terminate this Agreement at any time. Either party may terminate this Agreement, effective immediately upon written notice, if the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors that is not dismissed within sixty (60) days.

20. **Termination and Cancellation.** Orders for Custom Arrays or Custom Oligo Pools are non-terminable and non-cancelable once an order has been placed. In the event of any bankruptcy or insolvency proceeding commenced by or against Customer, Illumina shall be entitled to cancel any order then outstanding.

21. **Limitation of Liability.** IN NO EVENT SHALL ILLUMINA OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE). ILLUMINA'S TOTAL AND CUMULATIVE LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT RECEIVED BY ILLUMINA FROM CUSTOMER UNDER THIS AGREEMENT. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF ILLUMINA OR ITS SUPPLIERS HAVE BEEN

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

22. **Survival of Obligations.** The provisions of Sections 1 (Definitions), 2 (Applicability of Terms and Conditions), 5 (Financial Terms), 6 (Purchase Money Security Interest), 7 (Delivery/Title/Risk of Loss), 8 (Intellectual Property Ownership), 11 (Customer Privacy), 13 (Restrictions), 15 (Indemnity), 16 and 17 (Warranties), 19 and 20 (Termination), 21 (Limitation of Liability), 22 (Survival of Obligations) and 23 (Miscellaneous), and all payment obligations incurred during the term of this Agreement, shall survive the expiration or termination of this Agreement for any reason. All other rights and obligations of the parties under this Agreement shall cease upon termination or expiration of this Agreement.

23. **Miscellaneous.**

a. **Severability.** If any provision of this Agreement is held invalid or unenforceable, such provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

b. **Waiver.** The failure of either party to exercise any right granted herein or to require any performance of any term of this Agreement or the waiver by either party of any breach of this Agreement shall not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any subsequent breach of, the same or any other term of this Agreement.

c. **No Joint Venture or Agency.** Nothing in this Agreement shall constitute or create a joint venture, partnership, or any other similar arrangement between the parties. No party is authorized to act as agent for the other party hereunder except as expressly stated in this Agreement.

d. **Export Control.** Customer acknowledges and agrees that the System, the Components thereof, the Consumables, or any related technology provided under this Agreement may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder. Customer warrants that it will not export or re-export the System, any Component thereof, any Consumables, or any related technology into any country in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

e. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be deemed received when (a) delivered personally; (b) sent by confirmed telex or facsimile (followed by the actual document in air mail/air courier); (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or ten (10) days for international mail); or (d) one (1) day after deposit with a commercial express courier specifying next day delivery or, for international courier packages, two (2) days after deposit with a commercial express courier specifying 2-day delivery, with written verification of receipt.

f. **Assignment.** Customer shall not assign or transfer this Agreement or any rights or obligations under this Agreement, whether voluntary, by operation of law or otherwise, without the prior written consent of Illumina; provided, however, that no consent shall be required for any assignment in connection with any merger, acquisition or the sale of all or substantially all of the stock or assets of Customer to a party that (i) agrees in writing to be bound by the terms and conditions of this Agreement, and (ii) is not, in Illumina's reasonable judgment, a competitor of Illumina. Illumina may assign or transfer this agreement to any successor by way of merger, acquisition or sale of all or substantially all of its stock or assets relating to this Agreement. Illumina or any successor may assign all or part of the right to payments under this Agreement. Any assignment or transfer of this Agreement made in contravention of the terms hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties' respective successors and permitted assigns.

g. **Governing Law and Venue.** This Agreement and performance by the parties hereunder shall be construed in accordance with the laws of the country/state where the Illumina entity named on the quotation is located. Any action or proceeding arising under or relating to this Agreement shall (i) if initiated by Customer, be brought in the courts of the country/state where the Illumina entity named on the quotation is located, and (ii) if initiated by Illumina, be brought in the jurisdiction in which Customer is located.

h. **Force Majeure.** Illumina shall not be responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God, fire, flood, tornado, earthquake, hurricane, lightning, government actions, actual or threatened acts of war, terrorism, civil disturbance or insurrection, sabotage, labor shortages or disputes, failure or delay in delivery by Illumina's suppliers or subcontractors, transportation difficulties, shortage of energy, raw materials or equipment, or Customer's fault or negligence. In the event of any such delay the delivery date shall be deferred for a period equal to the time lost by reason of the delay.

i. **Entire Agreement/Amendments.** This Agreement represents the entire agreement between the parties regarding the subject matter hereof and supersedes all prior discussions, communications, agreements, and understandings of any kind and nature between the parties. No amendment to this Agreement will be effective unless in writing and signed by both parties.

**Illumina Terms and Conditions of Sale – U.S.
GPR Consumables**

1. **Definitions.** “**Agreement**” means either (i) the Quotation, including these terms and conditions which form a part thereof; (ii) all electronic information and terms of Illumina referenced during an Electronic Order, including these terms and conditions which form a part thereof in the case of an Electronic Order; or (iii) all terms referenced in an Order Confirmation, including these terms and conditions which form a part thereof in the case of an order placed without a Quotation and that is not an Electronic Order. “**Customer**” means the purchaser of the Goods hereunder. “**Customer Product**” means any and all products, materials, or services developed, marketed, sold, or provided by or for Customer (or by or for its customer) through use of, in conjunction with, or incorporating the Goods. “**Documentation**” means user manuals, written protocols or other written documentation provided by Illumina under this Agreement related to the use and/or maintenance of the Goods. “**Electronic Order**” means an order placed by Customer utilizing Illumina’s electronic commerce system (e.g., iCom). “**Facility**” means the Customer facility located at the shipping address identified on the Quotation, on the Order Confirmation, or during the Electronic Order, as applicable. “**Final Investment**” means either the amount designated (i) as “Final Investment” on the Quotation, (ii) in the Electronic Order, or (iii) in the Order Confirmation, as applicable. “**FDA**” means the U.S. Food and Drug Administration. “**Goods**” means any and all of the GPR Consumables and other items provided hereunder. “**GPR Consumables**” means any or all reagents or materials provided hereunder and labeled as or otherwise designated as a General Purpose Reagent as defined by FDA including the VeraCode GPR Beads. “**Intellectual Property Rights**” means all rights in patents, copyrights, trade secrets, know-how, trademark, service mark and trade dress and other intellectual property, current or future, under the laws of any jurisdiction, together with all rights in applications therefor and registrations thereto. “**Order Confirmation**” means a sales order confirmation document provided by Illumina. “**Quotation**” means a written quotation provided by Illumina to Customer. “**Specifications**” means the written specifications for the Goods that may be contained in the Quotation, Documentation, and/or other written materials provided to Customer by Illumina and in effect on the earlier of the date of the Quotation or date Customer places the order for such Goods. “**VeraCode GPR Beads**” refers to any or all of Illumina’s VeraCode™ Universal Capture Beads labeled as a General Purpose Reagent and VeraCode™ Carboxyl Beads labeled as a General Purpose Reagent.
2. **Applicability of Terms and Conditions.** This Agreement shall exclusively govern the ordering, purchase, and supply of the Goods, and shall override any conflicting, amending and/or additional terms contained in any purchase orders, invoices or similar documents, which are hereby rejected and shall be null and void. Illumina’s failure to object to any such terms shall not constitute a waiver by Illumina, nor constitute acceptance by Illumina of such terms and conditions. All orders or contracts for Illumina’s products and services must be approved and accepted by Illumina in writing to be valid.
3. **Financial Terms.** All prices are FOB point of shipment at Illumina’s designated location and Illumina, through its carrier, will deliver the Goods ordered hereunder to the Customer Facility. Illumina will make arrangements for shipment and will obtain appropriate insurance coverage for each shipment, both of which will be separately invoiced to Customer. All prices are exclusive of shipping and insurance charges, all of which are Customer’s sole responsibility. All prices and other amounts payable to Illumina under this Agreement are exclusive of and are payable without deduction for all sales, use, excise, value added, withholding and other taxes, customs duties, tariffs or charges now or hereafter claimed or imposed by any governmental authority upon the sale of the Goods, all of which will be paid by Customer. In the event Illumina is required to pay any such tax, duty or charge, such amount will be added to the purchase price or subsequently invoiced to the Customer. Prices are subject to revision due to interruptions, engineering changes or changes in quality caused or requested by Customer. Illumina will determine payment terms on a per-order basis and such terms are subject to a credit review by Illumina. Unless otherwise authorized in writing by Illumina, the Final Investment price shall be made in full by the Customer within thirty (30) days from the date of the invoice. Invoices will be issued by Illumina upon shipment of the Goods. Any amounts not paid when due will accrue interest at the rate of one and one half percent (1.5%) per month, or the maximum amount allowed by law, if lower. In the event that any payment is not made within such thirty (30) day period, Illumina shall have the right to revoke the rights conferred and/or licenses given hereunder, suspend performance, including shipment, until all payments are made current. Customer shall pay for all costs (including reasonable attorneys’ fees) incurred by Illumina in connection with the collection of late payments. The amount of credit may be changed or credit withdrawn by Illumina at any time. Each accepted purchase order is a separate, independent transaction, and Customer has no right of set-off against other purchase orders or other transactions with Illumina.
4. **Purchase Money Security Interest.** Customer hereby grants Illumina a purchase money security interest in the Goods in the amount of the unpaid balance of the purchase price for such Goods until paid in full. Illumina may file a U.C.C. financing statement for such security interest and Customer shall sign any such statements or other documentation necessary to perfect Illumina’s security interest.
5. **Delivery/Title/Risk of Loss.** All sales are FOB point of shipment at Illumina’s designated location, and Illumina’s title to Goods and the risk of loss or damage thereto shall pass to Customer at the time of Illumina’s delivery of such Goods to the carrier. The carrier shall be deemed Customer’s agent, and any claims for damages in shipment must be filed with the carrier. Illumina is authorized to designate a carrier pursuant to Illumina’s standard shipping practices unless otherwise specified in writing by Customer.
6. **Intellectual Property Ownership.** Title to and ownership of the Intellectual Property Rights embodied in the Goods, and any improved, updated, modified or additional parts thereof, shall at all times remain the property of Illumina or Illumina’s licensors. Any feedback, suggestions or improvements by Customer relating to the Goods (“**Customer Suggestions**”) shall be promptly communicated to Illumina, and Customer hereby grants Illumina a worldwide, royalty-free, fully paid-up, non-exclusive, perpetual, irrevocable license, with the right to sublicense, under all Customer’s Intellectual Property Rights related to such Customer Suggestions, to use such Customer Suggestions to improve Illumina’s products and services, and to make, offer for sale, sell, import, use, reproduce, perform, modify and distribute such improved products and services, including having such activities done on its behalf. Any data, discoveries and expressions which arise directly out of Customer’s use of the Goods, including without limitations, the data itself and any diagnostic or therapeutic information, discoveries or inventions arising from such data are “**Customer Discoveries**”; Illumina does not acquire any ownership interest in such Customer Discoveries solely by virtue of this Agreement. The Goods may be covered by one or more U.S. or foreign patents.
7. **No Royalties Due.** Customer shall have no royalty obligation to Illumina under this Agreement.

8. **GPR Consumables.** The GPR Consumables are general purpose reagents and are manufactured in accordance with the relevant rules and regulations of the FDA and are not intended for any specific diagnostic application. Except as expressly stated in these Illumina Terms and Conditions of Sale – U.S. GPR Consumables, all Goods that are not GPR Consumables are for research use only.
9. **Customer Regulatory Responsibilities.** Customer is solely responsible for ensuring the Goods are used in compliance with all applicable laws and regulations. Accordingly, Customer is solely responsible for obtaining all regulatory approvals, clearances, or authorizations required by any governmental authority for Customer (or its customer) to use (and market and sell, if applicable) the Goods for Customer's (or its customer's) intended uses.
10. **Rights Conferred upon Customer.**
- Subject to the terms and conditions of this Agreement including, without limitation, the exclusions under Section 10(b) and the additional rights that may be required under Section 10(d), Customer's purchase of the VeraCode GPR Beads confers upon Customer the royalty free non-exclusive, non-transferable, non-sublicensable right under Illumina's Intellectual Property Rights in the VeraCode GPR Beads, to use the VeraCode GPR Beads for any use permitted under applicable laws, rules, and regulations pertaining to a general purpose reagent under the FDA.
 - Exclusions.** As a condition of sale and without implying in any manner that the VeraCode GPR Beads are intended for any specific diagnostic application, the VeraCode GPR Beads may not be used for any molecular blood typing purposes (e.g., determining the blood groups of a blood cell) ("**Blood Typing**") and may not be included in any *in vitro* human diagnostic testing kit(s) intended for Blood Typing.
 - Research Use Only Goods.** Other than the GPR Consumables, all Goods are for research use only.
 - Additional Rights.** Customer acknowledges and agrees that Customer's intended use of the Goods may require Customer to obtain rights from third parties or additional rights from Illumina. By way of non-limiting example, Customer's use of the VeraCode GPR Beads in any assay it develops (i) to assay for a particular analyte; (ii) in connection with a particular assay chemistry; or (iii) to manufacture or sell an *in vitro* human diagnostic testing kit that incorporates or uses the VeraCode GPR Beads, may require a license or other permission from a third party that controls the rights to such analyte, assay chemistry, or testing kit. It is solely Customer's responsibility to ensure it (and its customer, if applicable) has all rights necessary for its intended use of the Goods.
11. **Customer Privacy.** Illumina agrees that it shall not sell, trade or otherwise share with any other customer of Illumina any account information of Customer. Customer acknowledges and agrees that Illumina may maintain and use a database of orders and account information pertaining to Customer solely for its internal purposes of order processing, maintaining records and assisting with future orders of Customer.
12. **Publicity.** Customer agrees that Illumina may publicly identify Customer as a user of its products. Except as expressly provided herein, each party agrees not to disclose any financial terms of this Agreement to any third party without the prior written consent of the other party, except as is required by securities or other applicable laws, in which case the disclosing party shall in a timely matter notify the other party and seek confidential treatment to the extent available, and permit the other party to take measures to protect the confidentiality thereof.
13. **Restrictions.** Customer shall use the Documentation in accordance with the restrictions set forth therein, which may include but shall not be limited to restrictions against altering, modifying or copying the Documentation or removing the Documentation from the Customer Facility without the prior written approval of Illumina. Any permitted copies of the Documentation shall include Illumina's copyright and other proprietary notices.
14. **Reservation of Rights.** Illumina reserves all rights not expressly granted in this Agreement, and no licenses are granted by Illumina under this Agreement, whether by implication, estoppel or otherwise, except as expressly set forth herein. The restrictions in Sections 10 and 13 are designed to alter the effect of the exhaustion of patent rights that would otherwise result from the sale of the Goods, and therefore control the sale of such Goods.
15. **Indemnity.**
- By Illumina for Infringement.** Except as set forth in Section 15(b), Illumina shall defend, indemnify and hold harmless Customer, and its officers, directors and employees, against any third-party claim or action alleging that the Goods, when used in a manner in accordance with the terms and conditions of this Agreement and in accordance with its Documentation at the Customer Facility, infringes any valid and enforceable Intellectual Property Right, and Illumina shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against such indemnified party in connection with any such action. If the Goods, or any part thereof, becomes, or in Illumina's opinion may become, the subject of an infringement claim against Illumina or Customer, Illumina shall have the right, at its option, to (i) procure for Customer the right to continue using such Goods, (ii) modify or replace such Goods, with substantially equivalent noninfringing products, or (iii) require the return of such Goods, and terminate the rights, license and any other permissions given hereunder with respect thereto and refund to Customer the depreciated value of such Goods as shown in the financial records of Customer or price paid for such Goods, whichever is less. This Section 15(a) states the entire liability of Illumina for any infringement of Intellectual Property Rights.
 - Exclusions.** Illumina shall have no obligations to defend, indemnify or hold harmless Customer or its officers, directors or employees with respect to any third-party claim or action alleging that (i) any act by Customer (or its customer) regarding the Goods, outside the scope of the rights, license(s), or permissions granted by Illumina to Customer for such Goods, (ii) the use of the Goods, in combination with any other products or services not supplied by Illumina, (iii) the use of the Goods to perform any assay not supplied by Illumina, (iv) any act regarding the Goods in a manner not expressly authorized in this Agreement or in the Documentation or on the labeling for such Goods, (v) the use of the Goods in, as, or with any other process not supplied by Illumina, or (vi) any Goods (or certain aspect thereof) provided hereunder in accordance with specifications or instructions furnished to Illumina by Customer (or by a third party on behalf of Customer), or (vii) any Customer Product, in each of (i), (ii), (iii), (iv), (v), (vi), or (vii) infringes any third party Intellectual Property Right (each, an "**Excluded Claim**").
 - By Customer.** Customer shall defend, indemnify and hold harmless Illumina, and its affiliates, officers, directors, distributors, agents, and employees, against: (i) any Excluded Claim, (ii) any other third party claim or action arising out of Customer's (or its customer's) acts regarding the Goods (other than an infringement claim covered by Section 15(a)), including, without limitation, actions arising out of Customer's failure to obtain any regulatory approvals required under Section 9, (iii) any breach by Customer of this Agreement and the

scope of the rights in Section 10 and elsewhere; and (iv) any claim or action that arises out of or is the result of any actions Customer (or its customer) has taken based on its analysis, interpretation or use of the information produced by the Goods; and Customer shall pay all settlements entered into, and all final judgments and costs (including reasonable attorneys' fees) awarded against such indemnified party in connection with any such action.

d. **Conditions.** Each party's indemnification obligations pursuant to this Section shall be subject to the indemnified party (i) notifying the indemnifying party promptly in writing of such action, (ii) giving the indemnifying party exclusive control and authority over the defense and settlement of such action, (iii) not entering into any settlement or compromise of any such action without the indemnifying party's prior written consent and (iv) providing all reasonable assistance to the indemnifying party (provided that the indemnifying party reimburses the indemnified party for its reasonable out-of-pocket expenses incurred in providing such assistance).

e. **Third-Party Goods.** Notwithstanding anything herein to the contrary, Illumina shall have no indemnification obligations with respect to any Goods originating from a third party and provided under this Agreement. Customer's sole right to indemnification with respect to such third party goods shall be pursuant to the original manufacturer's or licensor's indemnity, if any, to Customer, to the extent provided by the original manufacturer or licensor.

16. **Warranty.** Illumina warrants that, for a period of six (6) months from the date of delivery of any GPR Consumables, such GPR Consumables will conform to Illumina's Specifications. This limited warranty extends only to Customer, as original purchaser unless otherwise agreed upon in writing by Illumina. The foregoing warranties shall not apply if any such GPR Consumables (a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, use contrary to any instructions issued by Illumina, or has been used in any manner inconsistent with rights conferred upon Customer under this Agreement, (b) has been repaired, altered, disassembled or reassembled, (c) has not been operated, repaired and maintained in accordance with the Documentation, or (d) has failed due to an act of God, including but not limited to fire, flood, tornado, earthquake, hurricane, lightning, threat of or actual acts of terrorism or war. If during the six (6) month warranty period (a) Illumina is notified promptly in writing upon discovery of any failure of such GPR Consumables to conform to the warranty set forth in this Section 16(b) such GPR Consumables are returned, transportation charges prepaid, to Illumina's designated manufacturing facility in accordance with Illumina's then-current return procedures, as set forth by Illumina from time to time, and (c) Illumina's inspections and tests determine that such GPR Consumables indeed fails to conform and has not been subjected to any of the conditions set forth in this Section 16, then, as Customer's sole remedy and Illumina's sole obligation under the foregoing warranty, Illumina will, at Illumina's option, repair or replace without charge such GPR Consumables. Any GPR Consumables that have either been repaired or replaced under this warranty shall have warranty coverage for the longer of thirty (30) days or the remaining warranty period.

EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN THIS AGREEMENT, ILLUMINA MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE GOODS (INCLUDING WITHOUT LIMITATION THE GPR CONSUMABLES), DOCUMENTATION, OR ANY SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.

17. **Termination.** This Agreement shall continue in effect until terminated as provided in this Agreement. If either party breaches a material provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach, the non-breaching party shall have the right to terminate this Agreement at any time. Either party may terminate this Agreement, effective immediately upon written notice, if the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors that is not dismissed within sixty (60) days. In the event of any bankruptcy or insolvency proceeding commenced by or against Customer, Illumina shall be entitled to cancel any order then outstanding.

18. **Limitation of Liability.** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL ILLUMINA OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE). ILLUMINA'S TOTAL AND CUMULATIVE LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT RECEIVED BY ILLUMINA FROM CUSTOMER UNDER THIS AGREEMENT. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF ILLUMINA OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

19. **Survival of Obligations.** The provisions of Sections 1 (Definitions), 2 (Applicability of Terms and Conditions), 3 (Financial Terms for the Goods), 4 (Purchase Money Security Interest), 5 (Delivery/Title/Risk of Loss), 6 (Intellectual Property Ownership), 7 (No Royalties Due), 8 (General Purpose Reagents), 9 (Customer Regulatory Responsibilities), 10 (Rights Conferred upon Customer), 11 (Customer Privacy), 12 (Publicity), 13 (Restrictions), 14 (Reservation of Rights), 15 (Indemnity), 16 (Warranty), 17 (Termination), 18 (Limitation of Liability), 19 (Survival of Obligations) and 20 (Miscellaneous), and all payment obligations incurred during the term of this Agreement, shall survive the expiration or termination of this Agreement for any reason. All other rights and obligations of the parties under this Agreement shall cease upon termination or expiration of this Agreement.

20. **Miscellaneous.**

a. **Severability.** If any provision of this Agreement is held invalid, unenforceable, or illegal, such provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

b. **Waiver.** The failure of either party to exercise any right granted herein or to require any performance of any term of this Agreement or the waiver by either party of any breach of this Agreement shall not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any subsequent breach of, the same or any other term of this Agreement.

c. No Joint Venture or Agency. Nothing in this Agreement shall constitute or create a joint venture, partnership, or any other similar arrangement between the parties. No party is authorized to act as agent for the other party hereunder except as expressly stated in this Agreement.

d. Export Control. Customer acknowledges and agrees that the Goods or any related technology provided under this Agreement may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder (or the regulations and laws of another country). Customer warrants that it will not export or re-export the Goods or any related technology into any country in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

e. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed received when (a) delivered personally; (b) sent by confirmed telex or facsimile (followed by the actual document in air mail/air courier); (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid (or ten (10) days for international mail); or (d) one (1) day after deposit with a commercial express courier specifying next day delivery or, for international courier packages, two (2) days after deposit with a commercial express courier specifying 2-day delivery, with written verification of receipt.

f. Assignment. Customer shall not assign or transfer this Agreement or any rights or obligations under this Agreement, whether voluntary, by operation of law or otherwise, without the prior written consent of Illumina; provided, however, that no consent shall be required for any assignment in connection with any merger, acquisition or the sale of all or substantially all of the stock or assets of Customer to a party that (i) agrees in writing to be bound by the terms and conditions of this Agreement, and (ii) is not, in Illumina's reasonable judgment, a competitor of Illumina. Illumina may assign or transfer this Agreement to any successor by way of merger, acquisition or sale of all or substantially all of its stock or assets relating to this Agreement. Illumina or any successor may assign all or part of the right to payments under this Agreement. Any assignment or transfer of this Agreement made in contravention of the terms hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties' respective successors and permitted assigns.

g. Governing Law and Venue. This Agreement and performance by the parties hereunder shall be construed in accordance with the laws of the State of California, U.S.A., without regard to provisions on the conflicts of laws. Customer and Illumina consent to the exclusive jurisdiction of, and venue in, the state and federal courts within San Diego County, California, U.S.A.

h. Force Majeure. Illumina shall not be responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God, fire, flood, tornado, earthquake, hurricane, lightning, government actions, actual or threatened acts of war, terrorism, civil disturbance or insurrection, sabotage, labor shortages or disputes, failure or delay in delivery by Illumina's suppliers or subcontractors, transportation difficulties, shortage of energy, raw materials or equipment, or Customer's fault or negligence. In the event of any such delay the delivery date shall be deferred for a period equal to the time lost by reason of the delay.

i. Entire Agreement/Amendments. This Agreement represents the entire agreement between the parties regarding the subject matter hereof and supersedes all prior discussions, communications, agreements, and understandings of any kind and nature between the parties. No amendment to this Agreement or waiver of any right, condition, or breach will be effective unless in writing and signed by both parties.